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# PATTERNS OF A LIFE IN LAW: A CONSIDERATION OF CONTEMPORARY AMERICAN LEGAL BIOGRAPHY

Donald H.J. Hermann\*

*Aside from their interesting literary aspects, biographies and autobiographies afford the reader the opportunity to observe another's life and to realize the impact of that life on history. In this Article Professor Hermann examines some of the significant experiences of judges, legal academicians and practicing attorneys, as related in contemporary legal biography, and suggests that by coming to know these and other individuals who have worked in the law, a lawyer or law student will be better able to make meaningful decisions about his career and about himself.*

## INTRODUCTION

LEGAL biography has been a staple of American literature since the nineteenth century,<sup>1</sup> yet seldom do law students turn their attention to such works and seldom do lawyers look to the biographies of their brethren for anything more than entertainment or for the satisfaction of idle curiosity.<sup>2</sup> While it would certainly be a

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1. A few significant legal biographies which have obtained wide circulation include: A. BEVERIDGE, 1-4 THE LIFE OF JOHN MARSHALL (1916-1919); M.D. HOWE, JUSTICE OLIVER WENDELL HOLMES (1957); A. MASON, BRANDEIS: A FREE MAN'S LIFE (1946). Probably one of the most widely read legal biographies has been C.D. BOWEN, YANKEE FROM OLYMPUS: JUSTICE HOLMES AND HIS FAMILY (1944). See J. MARKE, DEANS' LIST OF RECOMMENDED READING FOR PRE-LAW AND LAW STUDENTS 26-53 (1958) [hereinafter cited as MARKE], for an extensive list of legal biography up to 1958. See generally LAW BOOKS RECOMMENDED FOR LIBRARIES (Assoc. of Amer. Law Schools No. 7, Docket Series Vol. II, 1969). This volume contains bibliographical information on American biographies from the eighteenth century on. It was collected by J. Myron Jacobstein of Stanford University and Morris L. Cohen of Harvard.

2. See MARKE, *supra* note 1, at 26, citing former Dean Mulligan of Fordham University who argued a preference for biography as a source of information and inspiration about a life in law:

Actually, better than any of these [other books recommended] I would think, is a good biography of eminent American jurists such as Marshall, Cardozo, Brandeis, or American lawyers such as Abraham Lincoln. I think

mistake to look at legal biographies as some sort of hagiography,<sup>3</sup> there is much to be said for examining the lives of other persons who share one's life's work in order to gain a better understanding of the significance of work in the profession, and to search for inspiration in meeting the challenges presented in one's career. The contribution of biography in providing role models is one which needs stress in a time without heroes.<sup>4</sup> The more appealing consideration, however, is that biography is one resource available to the individual who is attempting to gain a fuller understanding of his own identity,<sup>5</sup> or who is in the process of developing an identity. To know others is in a great measure to know ourselves. It is the premise of this article that in reading the biographies of those involved in law, we will come to know ourselves and find increased meaning in our work.

This article will consider the nature of biography and the place of legal biography in contemporary literature. The purposes that may be achieved in reading legal biography will then be examined

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that if a student can become imbued with the spirit of some of the great men of the law, this might be more helpful in his own development than introductory materials which are more prosaic in nature.

3. Hagiography is the biography of saints or venerated persons read for inspiration. See, e.g., A. BUTLER, *LIVES OF THE SAINTS* (1956).

4. See generally *The Vanishing American Hero*, U.S. NEWS & WORLD REPORT, July 21, 1975, at 16-18. But see A. SCHLESINGER, JR., *THE CRISIS OF CONFIDENCE* 233 (1969), where the author asserts that while there is a failure to adopt role models there remain some heroes:

Though students today no longer find models, if they ever did, in parents, professors or pastors, though many seek fulfillment in their personal code of authenticity or in drugs or love, they have not abandoned heroes. Nearly all regard John F. Kennedy with admiration and reverence. Many in 1968 followed and then mourned his brother; many others followed Eugene McCarthy . . . .

The disenchantment with national leaders controlling foreign policy as manifested in the Vietnam war, the failure of the new Left following Kent State and the alienation following the Watergate revelations and the resignation of Richard Nixon, have created a climate which is devoid of heroes of any magnitude and has led to a period dominated by privateness.

5. A sense of identity is crucial to stability and satisfaction in everyday life. See, e.g., A. WHEELIS, *THE QUEST FOR IDENTITY* 19 (1958):

Identity is a coherent sense of self. It depends upon the awareness that one's endeavors and one's life make sense, that they are meaningful in the context in which life is lived. It depends also upon stable values, and upon the conviction that one's actions and values are harmoniously related. It is a sense of wholeness, of integration, of knowing what is right and what is wrong and of being able to choose.

with special emphasis on the personal and professional benefits to be obtained from such reading. Finally, a number of recently published biographies in the broad categories of (a) jurists, (b) legal academicians, and (c) practicing attorneys will be considered. The emphasis here is not simply on alternative career patterns, but on the depth of personal experience witnessed in examining the lives of those persons being considered.

## I. WHAT IS BIOGRAPHY?

Biography, according to Thomas Carlyle, is "the life of a man;" it includes autobiography which is limited in perspective and to a given span of the writer's life.<sup>6</sup> The biography is to be distinguished from history, the philosophical treatise, or even a comment on contemporary occurrences; the biography has a "central hero" to whom all events and other personages are subsidiary.<sup>7</sup> In English literature, biography really came into being with William Roper's life of Sir Thomas More and George Cavendish's memorial of Cardinal Wolsey, both written in the sixteenth century.<sup>8</sup> In 1791, when James Boswell's *Life of Dr. Samuel Johnson* was published, biography as a form was fully developed, and this work is often regarded as the model of modern biographies.<sup>9</sup> Although the subject of this

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6. 3 THE ENCYCLOPEDIA AMERICANA 722 (1964). The word is derived from the Greek *bios* (life) and *graphein* (to write).

7. 3 THE ENCYCLOPEDIA BRITANNICA 636 (1968). See generally H. NICOLSON, THE DEVELOPMENT OF ENGLISH BIOGRAPHY 7-16 (1928) [hereinafter cited as NICOLSON]. The author circumscribes the subject matter of biography in the following terms:

The Oxford Dictionary defines biography as "the history of the lives [sic] of individual men as a branch of literature." This definition is convenient: it insists on three essential elements—"history," "individual," and "literature;" it prescribes by implication that biography must be a truthful record of an individual and composed as a work of art; it thus excludes narratives which are unhistorical, which do not deal primarily with individuals, or which are not composed with a conscious artistic purpose.

*Id.* at 7-8.

8. NICOLSON, *supra* note 7, at 28-37. See E. JOHNSON, A TREASURY OF BIOGRAPHY 12-52 (1941), where portions of Roper's and Cavendish's works are reprinted along with selections from important biographies published prior to 1950. See generally G. CARVER, ARMS FOR OBLIVION: BOOKS, MEN AND BIOGRAPHY (1946).

9. NICOLSON, *supra* note 7, at 109. Nicolson asserts, "In the formula invented and perfected by James Boswell our national talent for biography found its full expression." For a critical view of Boswell's work which recognizes it as great literature, but less than a perfect model for modern biography, see J. GARRATY, THE NA-

biography, Samuel Johnson, was both an engaging and important literary figure, and Boswell was a clever and gifted writer, the significance of the work lies in the fact that in form it was "autobiographical," using Johnson's conversations, letters and other documents. This plan was pursued in a terse writing style with strict adherence to "facts" as they were perceived by the author. Boswell attempted to determine the effect of circumstances on his subject by viewing his subject from various perspectives and emphasizing his growth and movement through life.

By the nineteenth century, biographies became superabundant. Their quality was uneven so that in literary terms one must conclude, just as now, that there were few meritorious works of this nature which appeared as a matter of course.<sup>10</sup> Nonetheless, it remains true, that in the mass of biographies that regularly appear one can find lives interesting to examine both for the experience of that life and for the impact of that life on history.

It is perhaps in the portrayal of particular life experiences that the essence of biography can be found; an essence which is also its chief significance. One commentator on biography has captured this aspect of the art.

[T]he distinction between recreating and commenting on a life is not so easy to respect. And the distinction is one that must be dealt with at the most critical moments in the life, the moments of decision, the moment when career takes a turn or love takes a wife, the moment when character is simultaneously illustrated and reshaped by a choice of action or attitude.

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TURE OF BIOGRAPHY 25-26 (1957).

Even Boswell's *Johnson*, certainly the most universally admired biography in any language, suffers from grave faults when judged as a biography. Boswell has been justly praised for his brilliant use of anecdote and conversation, for his subtle synthesis of materials, and for his masterly presentation of character. But his book is all out of proportion, with its heavy emphasis on the last years of Johnson's life, and it is dependent for that period chiefly on the observations of one man, the author. Where Boswell was forced to make use of sources other than his own keen eye and acute ear for dialogue, his book is hardly more than pedestrian in quality. It may be the world's best biography, but it is not a model biography.

See also R. ALTICK, *LIVES AND LETTERS: A HISTORY OF LITERARY BIOGRAPHY IN ENGLAND AND AMERICA* 58-74 (1965).

10. This is true of legal biography also, for instance 1-4 O. PICKERING, *THE LIFE OF THOMAS PICKERING* (1867-73); W. JAY, *THE LIFE OF JOHN JAY* (1833); W. MEIGS, *THE LIFE OF CHARLES JARED INGERSOLL* (1897). Quite often, as in the above, the authors were close relatives of the subject, and the works are characterized by an adulation which converts them to memorials rather than maintaining that objectivity which characterized Boswell's work.

These are the moments, sometimes not simple to detect, which mark the true stages of existence, the determining and determinate climaxes summing up the past and giving birth to the future, the moments when, as Carlyle pointed out, a man [and his biographer] discovers what he is in what he does.<sup>11</sup>

This focus on decisions calls for a choice among "the welter of psychological-physical happenings" in order to identify matters crucial to the personal decision.<sup>12</sup> Biography then, by nature, is limited not only to an abstraction of history, but an abstraction of an individual life. Thus biography can never inform us of the total personality of the subject but it can tell us much about the decision-making process, the criteria invoked as legitimatization, and the effects of these decisions.

Autobiography is a special form of biography; it is "life-writing" in that it is written by the person whose life is its subject.<sup>13</sup> Though it has been suggested that autobiography is limited by the fact that the writer has a restricted perspective of his life,<sup>14</sup> it is, nonetheless, true that a perceptive autobiographer is often capable of delving below the conscious, or is at least able to give clues to subconscious attitudes and beliefs which permit the discriminating reader to obtain a fuller understanding of the emotions of the person under scrutiny.<sup>15</sup> So while it has been asserted that "[t]he autobiographer, in sum knows more but tells less, *on the whole*, than the biographer,"<sup>16</sup> the autobiographer reveals more and the reader may discover more.

A tension has developed in modern biography between the claim of the social sciences to biography as part of historical and psychological studies<sup>17</sup> and the maintenance of biography as a literary form.<sup>18</sup> To this tension is added efforts at writing biography accord-

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11. P. KENDALL, *THE ART OF BIOGRAPHY* 27 (1965) [hereinafter cited as KENDALL].

12. *Id.* at 27-28.

13. *Id.* at 29.

14. *Id.* at 30.

15. See generally S. FREUD, *THE PSYCHOPATHOLOGY OF EVERYDAY LIFE* (1930).

16. KENDALL, *supra* note 11, at 30.

17. See, e.g., A. TAYLOR, *BISMARCK* (1955), a social science style biography joining the historical and psychological approaches; E. ERIKSON, *GANDHI'S TRUTH* (1969), a psychoanalytical biography which by its nature must be highly speculative; B. BAILYN, *THE ORDEAL OF THOMAS HUTCHENSON* (1974), an historical biography resting on a detailed documentary foundation.

18. See, e.g., L. STRACHEY, *EMINENT VICTORIANS* (1918).

ing to a journalistic form.<sup>19</sup> This tension caused Sir Harold Nicolson to lament at the conclusion of his lectures on biography that the "scientific interest in biography is hostile to, and it will in the end prove destructive of, the literary interest"<sup>20</sup> since a scientific approach insists on an account of all the facts of the life scrutinized. A literary approach, however, is satisfied with a partial or artificial representation of facts: "The scientific interest, as it developes, will become insatiable; no synthetic power, no genius for representation, will be able to keep the pace . . . [t]he more that biography becomes a branch of science the less will it become a branch of literature."<sup>21</sup> While for Nicolson, biography will retain its integrity only so long as it maintains the characteristics of "truth, individuality and art,"<sup>22</sup> he correctly recognized that biography of any quality must be valued for its effect of "conveying human experience."<sup>23</sup>

It is true, however, that even contemporary reviewers of biography demand the literary element to be present rather than accepting a simple record of facts. This point can be observed in the recent remarks of one judge of biography for the National Book Awards.

My own belief is that a biographer should aim for a combination of truth, dispassion and sympathy—a combination that is not, I would argue, unattainable. When it is attained, one passes from bias to point of view, without which a biography, unless it is printed out by a computer, can hardly be said to exist.<sup>24</sup>

As for autobiography, this same critic observed:

[It] is, I suspect, even more difficult to write than biography. It is not that sympathy is wanting. In a typical autobiography, there is a generous supply of *that* for the beloved object under scrutiny; but dispassion and objectivity are all too often in short supply.<sup>25</sup>

In both biography and autobiography, it is a life which is under scrutiny. By observing selected occurrences, decisions and relationships, we come to know another person as revealed in the by-products of life and as interpreted by the author or through the self-

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19. See, e.g., M. KALB & B. KALB, *KISSINGER* (1974).

20. NICOLSON, *supra* note 7, at 154.

21. *Id.* at 154-55.

22. *Id.* at 157.

23. *Id.* at 158.

24. Stansky, *Thinking about Biography*, 172, *THE NEW REPUBLIC*, Apr. 25, 1975, at 25.

25. *Id.*

revelation of the subject. The style of the writing or the mood of the author will crucially affect our understanding, but the central chore of the work is to communicate an understanding of the life of another person, and it is this potential for understanding which makes a biography so valuable for the modern reader. By observing the life of the subject we can develop critical standards for a style and the decisions of life, and can come to a basis for evaluating and leading our own life.

## II. THE VALUE OF LEGAL BIOGRAPHY TO THE PERSON TRAINED IN LAW

Legal biography, as a somewhat arbitrary classification, has been developed for the purposes of this article, and includes writings about and by persons trained in law and pursuing careers in law. The question being addressed here is why persons studying law or pursuing a career in law should read about the lives of other persons similarly situated.

Dean Thomas Shaffer of the Notre Dame Law School has suggested a disquieting result of the study of problems of professional responsibility: that to come to know lawyers as they appear to pursue their careers "is not to love them" and that to consider a lawyer's life with his clients "is not necessarily to look forward to it." Shaffer concludes that "[t]hese are ominous thoughts which center in a conflict between *role* and *identity*."<sup>26</sup> This conflict follows from an inconsistency in the internally held system of values and the conduct observed in the practice of law by the bar, or as a result of the criticism of lawyers by the public.<sup>27</sup> One commonly

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26. Shaffer, *Christian Theories of Professional Responsibility*, 48 S. CAL. L. REV. 721, 731 (1975) [hereinafter cited as Shaffer]. Shaffer suggests a process by which *role* and *identity* become clarified, and the conflict between them becomes apparent:

If I close my eyes and imagine a lawyer, I expose myself to a *role*. If I close my eyes and see me, I expose myself to an *identity*. And if I close my eyes and see myself as a lawyer, I expose myself to the conflict between my *role* and my *identity*. The *role* concept is sociological—seen from the outside in; the *identity* concept is psychological—seen from the inside out.

*Id.*

27. See J. CAVANAUGH, *THE LAWYER IN SOCIETY* 66-67 (1963) [hereinafter cited as CAVANAUGH], noting quotations from literature as evidence of the low esteem in which lawyers are held.

Attorneys and rogues are vermin not easily rooted out of a rich soil.

Walpole, *Letter to Sir Horace Mann*

Why is there always a secret singing  
When a lawyer cashes in?



accepted solution to this conflict is a separation of private life from career role resulting in a certain kind of schizophrenia, *i.e.*, the person passes through various roles, acting them out according to perceived expectations, but remaining personally remote from actual involvement. In a sense the person is an observer of his own activity.

The gravest danger in this solution is the loss of personal identity. The psychiatrist Robert Jay Lifton of Yale University has denominated this condition as "Protean Man" and describes the condition as a style of self-process "characterized by an interminable series of experiments and explorations, some shallow, some profound, each of which can readily be abandoned in favor of still new, psychological quests."<sup>28</sup> Lifton provides a graphic example of his concept of "protean style" in a report of an interview with one of his patients, a teacher, who admitted to assuming the "mask" of a number of roles in his life.

He asked the question, "Is there, or should there be, one face which should be authentic?". . . . He went on to compare himself to an actor on the stage, who, as he put it, "performs with a certain kind of polymorphous versatility," and here he was of course referring, somewhat mockingly, to Freud's well-known phrase "polymorphous perversity" for the diffusely inclusive and, in a way also Protean, infantile sexuality. And he went on to ask: "Which is the real person, so far as an actor is concerned? Is he more real when performing on the stage, or when he is at home? I tend then to think that for people who have these many, many masks, there is no home. Is it a futile gesture for the actor to try to find his real face?"<sup>29</sup>

A lawyer is faced with the possibility of the protean condition when he adopts the "mouthpiece" syndrome<sup>30</sup> and submerges his en-

Why does a hearse horse snicker  
Hauling a lawyer away?

Sandburg, *The Lawyer Knows Too Much*

I would be loath to speak ill of any person who I do not know deserves it, but I am afraid he is an attorney.

Samuel Johnson (Mrs. Piazzzi, *Johnsoniana*)

28. R. LIFTON, BOUNDARIES: PSYCHOLOGICAL MAN IN REVOLUTION 44 (1969) [hereinafter cited as LIFTON].

29. *Id.* at 45.

30. CAVANAUGH, *supra* note 27, at 36, where the "mouthpiece" syndrome is described:

"Mouthpiece" is the word sometimes used to describe the lawyer in his capacity as advocate. As in his role as social engineer, he here takes as his own the direction and goal supplied by his client. But while engineering

tire personality into the pursuit of his clients' goals. This was the tragic flaw of some lawyers who served the Nixon White House.<sup>31</sup> While the lawyer's calling requires service to the client, that calling is perverted when it is pursued in violation of one's sense of personal ideals, when role is chosen at the sacrifice of identity.<sup>32</sup>

On the other hand, there is a danger that in avoiding the possibility of conflict between role and identity, the individual will seek to maintain a rigid personality without the ability to adapt to the needs of others or to accommodate to social or historical changes. Lifton describes this personality type as "one dimensional" and regards it as a defense to the challenge presented by role.

[O]ne can observe in contemporary man a tendency which seems to be precisely the opposite of the Protean style. . . . I refer here to the closing off of identity, the constriction of self-process, to a straight-and-narrow specialization in psychological as well as in intellectual life, and to reluctance to let in any extraneous influence. This kind of "one-dimensional" self-process, however, I would see as having an essentially reactive or compensatory quality. In this it differs from earlier characterological styles it may seem to resemble, such as Riesman's inner-directed man, and still earlier patterns in traditional society. For these were direct outgrowths of societies which then existed, and were therefore in harmony with those socie-

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the client's purpose requires only the use of the lawyer's technical competence, advocating that purpose requires the use of the lawyer's skill . . . in eliciting emotional as well as intellectual response. To lend these very personal traits, which are usually natural gifts, not acquired, to another's purposes and goals seems to many to be a prostitution of the personality. Hence comes the derogatory term "mouthpiece."

See generally Hermann, *The Brave New Breed Revisited*, 24 WASH. ST. B.J. 38 (1970).

31. See generally Watson, *The Watergate Lawyer Syndrome: An Educational Deficiency Disease*, 26 J. LEGAL ED. 441, 445-47 (1974) [hereinafter cited as *The Watergate Lawyer Syndrome*].

32. See D. ROSENTHAL, *LAWYER AND CLIENT: WHO'S IN CHARGE* (1974). Through an empirical study of the relationship between lawyers and clients in personal injury cases, the author concludes that the "participatory" role of the client is superior to the "traditional" role of professional dominance. Yet, the author does not maintain that this "participatory" relationship inevitably leads to the "mouthpiece" syndrome. Choices are still available.

Under the [traditional model], if the lawyer honestly believes that it is in the long-term interests of the client not to get custody of the child, by whatever criteria of interest the lawyer deems appropriate, he is justified in seeking to deny that custody regardless of the client's desires. Under the participatory model, the lawyer may not act contrary to the desires of the client, without assuming liability for negligence or even for an intentional tort. . . . [He] has three choices: to persuade the parent to surrender custody, vigorously to seek custody of the child for the client in spite of his misgivings, or to withdraw from the case.

*Id.* at 177.

ties, while the constricted self-process . . . requires continuous psychological work to fend off Protean influences which are always abroad.<sup>33</sup>

The integrity of the individual, which comprises one's identity, can accommodate the requirements of roles and meet the exigencies of new and various situations only if there is confidence in the sense of self and a sensitivity to the needs of others. This calls for a balance which has been described by Andrew Watson of Michigan Law School as a "high sensitivity to self joined with great sophistication about the technical obligations and procedures of the legal profession."<sup>34</sup> It is important, however, to understand that the accommodation of one's sense of identity does not require a surrender to role,<sup>35</sup> and it is the observation of this ability which can be observed in the lives of persons worthy of admiration, who have chosen to live a life in law.

While much of what has been said about the relationship between identity and role, and by implication the relevance of biography as a resource in resolving this conflict, appears to be aimed at the adolescent or young adult, there is, however, a continuing relevance to persons whose lives are lived with integrity. Throughout life, the individual has a series of conflicts which, as they are resolved, will have a crucial effect on the personality. The psychoanalyst Eric Erikson has focused much attention on the development of identity in the earlier stages of life, including accommodation to trust, autonomy and initiative, but he has as strongly maintained that the content of personal identity must reflect the resolution of the conflicts between intimacy and self-absorption, between generativity and stagnation, and between integrity and despair.<sup>36</sup> These latter con-

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33. LIFTON, *supra* note 28, at 51-52.

34. *The Watergate Lawyer Syndrome*, *supra* note 31, at 441.

35. See E. ERIKSON, *CHILDHOOD AND SOCIETY* 368, n.1 (1950). Erikson describes this accommodation:

The concept of ego identity may be misunderstood in two ways. One misconception would be that a sense of identity is achieved primarily through the individual's complete surrender to given social roles and through his indefinite adaptation to the demands of social change. This, of course, would mean a fixation on an adolescent solution. No ego, it is true, can develop outside of social processes which offer workable prototypes and roles. The healthy and strong individual, however, adapts these roles to the further processes of his ego, thus doing his share in keeping the social process alive.

36. Erikson, *Growth and Crisis of the "Healthy Personality"* in C. KLUCKHOHN, & ASSOC., *PERSONALITY IN NATURE, SOCIETY, AND CULTURE* 185 (1955), *reprinted in*

flicts are encountered throughout adulthood and the witness of those who have successfully coped with these conflicts can be a source of wisdom for those proceeding through life. Erikson designates a successful life as one lived with "integrity," which he characterizes as the resolution of the conflict of identity and role.<sup>37</sup>

As Dean Shaffer has suggested, personal identity is broader in scope than one's professional role; it is "broader and deeper than his sense of himself as a lawyer."<sup>38</sup> Yet the problem of identifying the contours of expected role, of locating role models, is difficult and it is here that biography is particularly helpful.<sup>39</sup> While one must continue to test the demands or expectations of role against

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J. KATZ, J. GOLDSTEIN, A. DERSHOWITZ, *PSYCHOANALYSIS, PSYCHIATRY AND LAW* 334 (1967). Erikson describes a prescription appropriate to the individual who finds himself in a professional role.

Freud was once asked what he thought a normal person should be able to do well. The questioner probably expected a complicated, a "deep" answer. But Freud is reported to have said, "*Lieben und arbeiten*" (to love and to work). It pays to ponder on this simple formula, it gets deeper as you think about it. For when Freud said "Love," he meant the expansiveness of generosity as well as genital love; when he said love *and* work, he meant a general productiveness which would not preoccupy the individual to the extent that his right or capacity to be a sexual and a loving being would be lost. Thus we may ponder but we cannot improve on the formula, which includes the doctor's prescription for human dignity—and for democratic living.

*Id.* at 349.

37. *Id.*

Only he who in some way has taken care of things and people and has adapted himself to the triumphs and disappointments adherent to being, by necessity, the originator of others and the generator of things and ideas—only he may gradually grow the fruit of the seven stages [of personality development], I know no better word for it than integrity. . . . It is the acceptance of one's own and only life cycle and of the people who have become significant to it as something that had to be and that, by necessity, permitted of no substitutions.

38. Shaffer, *supra* note 26, at 735.

39. Dean Shaffer points out the great difficulty for the law student in finding role models for the conventional practice of law.

It is generally true that many students come to law school without knowing well even one lawyer, and many young lawyers enter the practice without knowing well any lawyers but their law school teachers. Both facts were true in my case. Idealized visions of Webster, Darrow, John W. Davis, and Brandeis are remote. Judges are of questionable value as models for law students because most of us do not think of ourselves as judges, or if we do, we are, because of it, poorer lawyers. Although professors inevitably are models for professional conduct, they are often inadequate in this regard because they are not *in* professional practice. . . .

Shaffer, *supra* note 26, at 735-36.

a personal sense of self, it is clear, as Shaffer points out, that reference to the lives of others is an important source of information. In considering the insights of modern psychological theory for the resolution of the conflict of identity and role, Shaffer enumerates both needs and resources. The needs include: an understanding of one's own feelings since "much of learning how to be a lawyer is learning how to be oneself";<sup>40</sup> and a knowledge about people. As for resources, "one's best resource for learning about people is himself," however, "one's next best resource for learning about people, and thus for learning about himself, is other people."<sup>41</sup> The lives of others as rendered in biography are, moreover, one important resource for learning about other people.

The value of such reading is increased as more of the total person is observed coping with the problems of life and agonizing over what are perceived to be crucial decisions. It is this union of the intellectual and the emotional which is observed in another's life, and which is so often ignored in legal study and professional discussions, that is central to the living of a life in law.<sup>42</sup> Andrew Watson has observed that the English bar involves the practitioner in intimate contact with others similarly situated so that sociological conditions facilitate a transmission of ideal standards of behavior and professional responsibility. These standards are communicated in highly effective ways and maintenance of a high level of professional behavior "does not need to rely quite so much on internalized psychological controls and imagery."<sup>43</sup> Of course, the experience of the Inns is not available to the American lawyer, nor is the practice conducted with the same sense of professional community so that "the development of internalized value systems and controls" becomes of paramount importance.<sup>44</sup> It is this sense of idealistic professional behavior in performance of role which Watson properly suggests is crucial to a satisfying pursuit of a career in law.

Professionalism in the last analysis is related to idealistic behavior, and a

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40. *Id.* at 741.

41. *Id.*

42. See generally Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, 37 U. CIN. L. REV. 91 (1968) [hereinafter cited as *The Quest for Professional Competence*].

43. *Id.* at 156.

44. *Id.* at 157.

failure to make this kind of identification must categorically be viewed as a serious academic omission. I believe that successful legal education must pay conscious and continuous attention to such problems of idealism, and the psychological dynamics of developing a professional attitude must be comprehended and fully utilized.<sup>45</sup>

Watson is quite explicit in the value of "heroes" whose behavior and careers can serve as standards for professional behavior.

Law schools must provide students with "heroes for emulation" . . . I am suggesting straightforward hero worship with the deliberate provision of heroes. The ultimate purpose . . . is to supply students with a variety of desirable models after which they can pattern their professional career.<sup>46</sup>

Considering the possible source of such heroes and role models, Watson suggests that a valuable resource is to be found in world literature including novels and biography. He observes that "[t]hese books minutely describe the behavior of lawyers in various modes of their operation. They are not only interesting to read as literature, but they provide superb material on professional behavior . . . ."<sup>47</sup>

Watson has lately observed a fact that makes heroes and models relevant to the mature lawyer; this is the fact that much of the lawyer's work goes on in private shrouded by the attorney-client privilege. This means the activity is never held up to public scrutiny and there is no occasion for public acclaim.<sup>48</sup> Thus as Watson observes: "Counsel's gratification about handling these difficult

45. *Id.* at 127.

46. *Id.* at 158. The development of standards of "idealistic behavior" makes the search for heroes a significant personal endeavor. The hero is a necessary cultural phenomena, and while this seems to be a time without heroes, a culture cannot long survive without them. A personal sense of idealism probably cannot be maintained without the reference point provided by the hero. See R. ANGELL, *FREE SOCIETY AND MORAL CRISIS* 28 (1965):

In the folklore of primitive peoples and the sagas of peoples taking their first step toward civilization the symbols of common values are folk heroes; in the literature of highly developed societies, they are historic figures. The United States has a distinguished gallery of these, three of whom are of giant stature: Washington with his dignity and steadfastness, Jefferson with his belief in the common man, and Lincoln with his human compassion. There is no need to spell out the role such heroes play in keeping common values fresh and in projecting them, by force of subtle suggestion, into action. Who can say how many Americans have not been inspired in their daily lives by the examples of these great men?

47. *The Quest for Professional Competence*, *supra* note 42, at 158-59.

48. *The Watergate Lawyer Syndrome*, *supra* note 31, at 444. See also Hermann, Book Review, 1972 *Wis. L. Rev.* 634, 660.

problems skillfully must come almost completely from within himself in the form of self-knowledge and self-satisfaction."<sup>49</sup> This of course requires a sense of integrity, and this sense of integrity comes in part from "the presence of good examples of how to do it."<sup>50</sup> Many good examples of how to live a life in law with integrity, which in turn gives rise to a sense of self-satisfaction, can be found in the lives of lawyers as recounted in biography.

The remainder of this article will examine a number of recent biographies of persons engaged in legal careers. The emphasis will be placed on the type of insights which can be gained from this genre of literature; insights which can give guidance and meaning to persons about to be or already engaged in legal careers.

### III. A SURVEY OF RECENT LEGAL BIOGRAPHY

#### A. BIOGRAPHIES OF JURISTS

##### *John Marshall*

It is more than half a century since Albert J. Beveridge published his four volume comprehensive biography, *The Life of John Marshall*.<sup>51</sup> While that work has weathered the years quite well, it may be superseded by the impressive biography Leonard Baker has written, *John Marshall: A Life in Law*,<sup>52</sup> a four part work which

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49. *The Watergate Lawyer Syndrome*, *supra* note 31, at 444.

50. *Id.* at 444-45:

This ability to carry out self regulation and self criticism, and self pay-off, takes a great deal of guided experience to learn and build into one's psychological functioning. Failure to emphasize and reinforce this kind of satisfaction . . . will greatly increase the incidence of unethical and unprofessional behavior by lawyers. . . .

51. A. BEVERIDGE, 1-4 *THE LIFE OF JOHN MARSHALL* (1916-1919). The succeeding period has seen a number of commentaries which attempt to fix Marshall's contribution to our constitutional legal system, but no significant effort has been made to give a full account of his life. *See, e.g.*, E. CORWIN, *JOHN MARSHALL AND THE CONSTITUTION* (1919); B. PALMER, *MARSHALL AND TANEY: STATESMEN OF THE LAW* (1939); D. LOTH, *CHIEF JUSTICE: JOHN MARSHALL AND THE GROWTH OF THE REPUBLIC* (1949); *CHIEF JUSTICE JOHN MARSHALL: A REAPPRAISAL* (W. Jones ed. 1956); S. KONEFSKY, *JOHN MARSHALL AND ALEXANDER HAMILTON: ARCHITECTS OF THE AMERICAN CONSTITUTION* (1964); R. FAULKNER, *THE JURISPRUDENCE OF JOHN MARSHALL* (1968); R. NEWMAYER, *THE SUPREME COURT UNDER MARSHALL AND TANEY* (1969); D. DEWEY, *MARSHALL VERSUS JEFFERSON* (1970); *JOHN MARSHALL* (S. Kutler ed. 1972). A well written biography for the younger reader is provided in T. MARTINI, *JOHN MARSHALL* (1974).

52. L. BAKER, *JOHN MARSHALL: A LIFE IN LAW* (1974) [hereinafter cited as

is concerned with Marshall's four adult professional roles: soldier, lawyer, diplomat and judge.

Chief Justice John Marshall presided over the United States Supreme Court for almost three and one-half decades during the formative period of our constitutional law. Marshall championed judicial supremacy,<sup>53</sup> judicial review of legislative action,<sup>54</sup> the primacy of federalism<sup>55</sup> and the inviolability of contracts.<sup>56</sup> In a great measure, Marshall's judicial contributions to American history are a product of his life, especially his development of a sense of independence and a devotion to law. Baker states this proposition as the theme of his book: "The story of John Marshall is the story of one man's devotion to law and his efforts to persuade his country of the wisdom of such devotion."<sup>57</sup>

Marshall, the son of a Virginia landowner, was a bright child and a good student. His background and early associations developed in him a dedication to a system of property ownership and an acceptance of slavery. At nineteen, as a lieutenant in the Virginia Militia, he served four years doing valiant service at the battles of Great Bridge, Valley Forge, and Monmouth. Success as a soldier and a friendship with Washington brought Marshall decorations and some renown. Baker argues that Marshall's later success follows from these early years when the forces of the frontier provided him with good health, self-reliance, friendship, and the influence of educational discipline. Baker also reports that this frontier experience impressed on Marshall the necessity of a legal system.

It was, however, his educational experience which destined Marshall to excel in relationship to his father and his contemporaries.

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BAKER]. See Stephenson, Book Review, 48 S. CAL. L. REV. 959 (1975) where the author makes several interesting comparisons between the biographies written by Beveridge and Baker. "While Beveridge's work consisted of four volumes, Baker's consists of one. Yet the actual length of the two books is approximately the same; Beveridge's consists of 449,000 words of text, Baker's has 373,000." *Id.* at 960-61. The respective authors consider Marshall's life in a similar pattern. Baker, however, emphasizes the personal aspects of Marshall's life in contrast to Beveridge's emphasis on his legal and political activities in their social context.

53. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

54. *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819).

55. *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824).

56. *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87 (1810); *Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518 (1819).

57. BAKER, *supra* note 52, at ix.



His formal legal education consisted of a few months at The College of William and Mary, the customary length of time in that era. During that short period, Marshall showed a singleminded diligence in his studies.

Prior to and following his studies, Marshall courted Polly Amber, whose companionship would serve him well throughout his life. His career was assisted greatly by the couple's connections: her father was a Richmond alderman and a state treasurer; his father, who had established the family wealth, became prominent in Kentucky government serving as an agent for George Washington at the frontier and thus keeping his son's name in prominence before national authorities.

In 1780, young Marshall presented himself at the Fauquier County courthouse with a license signed by Thomas Jefferson and proceeded rapidly to establish himself as an effective member of the Richmond bar. Although he was often dismissed by clients on first impression as unsophisticated and of eccentric or unkempt dress, his appearance was deceptive because he was not only an effective lawyer but was quickly becoming an enterprising land speculator.

By the mid-1780's John Marshall had developed a specialty in appellate advocacy, although he was not considered a great orator. "His style was said to be simple and clear and he possessed 'a quickness of perception that enabled him at once to lay hold on the strong points of his own cause and the weak ones of his adversaries.'"<sup>58</sup>

Attitudes which he developed in his youth, and later experiences which reinforced these attitudes, can be observed in Marshall's career.<sup>59</sup> For instance, his dedication to an independent judiciary stemmed in part from his belief that one cause of the American Revolution had been King George III's arbitrary treatment of judges. In 1783 as a member of the Privy Council, Marshall heard a petition from the governor to have a magistrate removed for "diverse gross misdemeanors, disgraceful to the character which should be preserved by a justice of the peace."<sup>60</sup> While the law permitted obtaining advisory opinions on the conduct of magistrates, Marshall joined

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58. *Id.* at 87.

59. *See generally* BAKER, *supra* note 52, at 90-92.

60. *Id.* at 90.

in an opinion recommending against executive exercise of any direct control over the judiciary. Such control, despite any legal capacity of the executive, was "contrary to the fundamental principles of our constitution and directly opposite to the general tenor of our laws;" judges should be tried for illegal conduct and not subject to vague discretionary action of the executive.<sup>61</sup>

Marshall evidenced a strict conformity to the requirements of his role and office while remaining sensitive to the problems of others and of the community. In his first judicial position, equivalent to justice of the peace, assumed in 1785 and the only judicial office he held before moving to the Supreme Court, Marshall was presented with a petition for clemency. The case involved a free black woman who had killed an assailant in her home but who was unable to give testimony in her defense because evidence from a black against a white was not permitted in court.<sup>62</sup> Moreover, the woman was raped in prison and became pregnant while under a sentence of death. Marshall was asked to sign a petition declaring the woman not guilty and the victim of prejudice by the venire. Marshall refused to sign this petition because he had not heard the facts of the case. However, upon the urging of his wife, he joined in a petition for mercy for the woman, based on the report of her good character. The woman was pardoned.

Involving himself in the life of the community, Marshall joined veterans groups, church groups, the Masons, and various social clubs. Baker reports extensively on Marshall's ability to relax with friends and colleagues in his social clubs; a continual source of satisfaction to Marshall in his professional life.

The Constitutional Convention of 1787, following growing difficulties with maintaining national unity under the Articles of Confederation, caught Marshall at a propitious moment in his career and provided him a political question with which he could readily identify: the primacy of federalism. While Marshall did not attend the Convention, he was a strong advocate of the adoption of the Constitution. Marshall, himself, recognized the significance of life's experience in the formation of his opinion of the significance of the Constitution.

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61. *Id.* at 91.

62. *Id.* at 101.

[E]xplaining why he supported the Constitution he attributed it "at least as much to casual circumstances as to judgment." He had grown up, he explained, at a time when love of country and opposition to England was inseparable, "and I had imbibed these sentiments so thoroughly that they constituted a part of my being." And then in the Army, he continued, he had met men from all the states who had risked their lives in the cause of country. His interest in the Union continued when he returned to civilian life, particularly when he entered the legislature and discovered "that no safe and permanent remedy could be found but in a more efficient and better organized general government." The part of the Constitution which imposed restriction on the states most appealed to him because he had come to realize that without such a central power, there was "no safe anchorage ground" and so he became a "determined advocate" for adoption of the Constitution.<sup>63</sup>

With the adoption of the Constitution, Marshall retreated from state politics and returned to his prosperous law practice in Richmond.

The French Revolution produced some division in America, and the tension heightened when Washington's government signed the Jay Treaty and cast aside the entreaties of Jefferson for a pro-French intervention. Marshall joined the supporters of Washington and gained a national reputation for his efforts. Baker points out the coincidence of Marshall's interests as a wealthy landowner and the stabilization that resulted from the treaty. It is interesting to note that the responsibilities accompanying age and property ownership resulted in a lessening interest in war, a topic which had captivated Marshall's imagination at the time of the American Revolution.

As relations with the French worsened, President Adams turned to Marshall along with Ambassador Pinckney and Elbridge Gerry to reach a satisfactory understanding with the French. Marshall, understandably, was reluctant to accept this or similar appointments which might interfere with his career or his finances.

He hesitated, however—"It was the first time in my life that I had ever hesitated concerning the acceptance of office," he recalled years later. He felt "a very deep interest" in the French situation; he had been involved in it actively since 1793 and he had helped create it by his vociferous defense of George Washington. He believed John Adams sincerely wanted to adjust the differences with France peacefully. . . .<sup>64</sup>

It is important to note that his decision to accept the appointment was not made out of pure sense of duty, but it was tempered by

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63. *Id.* at 119.

64. *Id.* at 217-18.

personal considerations including an assessment of the burden of the task as well as benefits to be obtained from it.

The determining point . . . was that the appointment would be a temporary one . . . . "I should return after a short absence, to my profession, with no diminution of character, and I trusted, with no diminution of practice. . . . I could make arrangements with the gentlemen of the bar which would prevent my business from suffering in the meantime."

. . . .

Perhaps there was another factor. John Marshall was by now an educated, even a cultivated man. . . . But never had he been to Europe. Never had he experienced that cosmopolitan aura of Paris, and perhaps he believed it was time to correct that oversight. Marshall accepted the appointment.<sup>65</sup>

While Marshall had no special gift of diplomatic talent, his talent as an advocate and his sense of practical judgment enabled him to carry out his mission successfully.

Following his return to the United States, Marshall was drafted as a federalist congressman from Virginia. Motivated by practical politics, he soon moved away from an extreme federalist position and opposed the Alien and Sedition Laws, which had federalist sponsorship.<sup>66</sup> Marshall demonstrated a sense of pragmatism and a carefully developed position which one associates with a successful politician who must appeal to his constituency, in this case Virginia voters hostile to the Alien and Sedition Laws, and his political party which sponsored them.

"I am not . . . an advocate for the Alien and Sedition Bills." At a time when his political party had made the Alien and Sedition Laws its *raison d'être*, at a time when the Alien and Sedition Laws were the major—almost the only—political issue, those eleven words of John Marshall's required courage. "Had I been in Congress when they passed, I should, unless my judgment could have been changed, certainly have opposed them." Marshall, however, still a Federalist, still the admirer of George Washington, could not completely disown the handiwork of Washington and his own party. "I do not think them fraught with all those mischiefs which many gentlemen ascribe to them," he said. His opposition, he continued, would have been based on his belief that the bills, rather, were useless and because they "are calculated to create unnecessary discontents and jealousies at a time when our very existence, as a nation, may depend on our union." He then added that if the bills when originally proposed, had been fought on that basis by someone "not suspected of intending to destroy the government, or being hostile to it"—meaning a prominent Federalist such as himself—they never would have been enacted. As for opposing them if he were elected, Marshall said he believed the issue would be settled before

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65. *Id.* at 218.

66. *Id.* at 304.

he could take his seat. In the event of any doubts, however, he added: "I shall indisputably oppose their revival."<sup>67</sup>

As an elected official he served his constituents according to their wishes so far as they were consistent with his convictions. However, shortly after his election he was appointed by President Adams as Secretary of War, and then as Secretary of State in which office he served until his appointment to the Supreme Court in 1801.

Marshall's career was pursued in constant opposition to the policies of Thomas Jefferson, and that opposition took on the form of institutional conflict when Marshall became Chief Justice. In the Court's opinion in *Marbury v. Madison*,<sup>68</sup> Marshall firmly established the doctrine of judicial review with the result that judicial appointments made by Adams were validated in opposition to the position taken by Jefferson, though they were not enforced.<sup>69</sup>

It was, however, the trial of Aaron Burr, with Marshall sitting as a trial judge which presented the hardest test for his maintenance of judiciousness, since the trial of Burr was of major significance to President Jefferson. A major confrontation occurred when Burr demanded presentation to the court of a letter from Jefferson to General Wilkinson, which Burr alleged would reveal a direction "to destroy my person and my property."<sup>70</sup> Marshall did issue a subpoena for the letter. Acknowledging that the subpoena would be viewed as an exercise of his discretion in a way vexing to Jefferson, he went to pains to establish that the law and justice required that all evidence be brought to the court in a case involving the life and liberty of a defendant. "The point of Marshall's decision, and its genius, was the affirmation of the court's role as protector of the individual."<sup>71</sup> The trial, itself, resulted in Burr's acquittal.

Marshall served as Chief Justice for thirty-three years. His opinions evidenced a judicial craft, an inventiveness, and a faithfulness to personal convictions established throughout his life. With his retirement in 1834, Marshall returned to Richmond. One of the most significant values of a life well lived is the satisfaction that it

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67. *Id.* at 304-05.

68. 5 U.S. (1 Cranch) 137 (1803).

69. See generally BAKER, *supra* note 52, at 394-417.

70. *Id.* at 477.

71. *Id.* at 482.

brings to its subject at its close and the feeling of a sense of integrity as one approaches death void of any sense of despair. Marshall revealed that feeling of integrity in his own life when he remarked in 1835: "Could I find the mill which would grind old men, and restore youth, I might indulge the hope of recovering my former vigor and taste for the enjoyment of life. But as that is impossible, I must be content with patching myself up and dragging on as well as I can."<sup>72</sup> Marshall died within the year.

Baker's *John Marshall: A Life in Law* provides a wealth of historical and legal matter for the interested reader. But its significance is the development of the human side of a great man who was dedicated to a career in law and to the primacy of the law itself.

### *Charles Evans Hughes*

The institutional inviolability of the Court which was established by Marshall was defended by Charles Evans Hughes more vehemently than by any other justice in the Court's history,<sup>73</sup> with the possible exception of the eight justices who joined in the opinion in *United States v. Nixon*.<sup>74</sup> No satisfactory biography of Charles Evans Hughes is available,<sup>75</sup> and that fact alone makes *The Autobiographical Notes of Charles Evans Hughes*, edited by David Danelski and Joseph Tulchin, a valuable publication.<sup>76</sup> In addition, these *Notes* which were dictated by Hughes after his retirement, are significant for the insight they provide into Hughes' motivations and his self-assessment.<sup>77</sup> Hughes provides an account of a life marked with career success but characterized by psychological stress. Present throughout the book is the feeling that the attainment of success,

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72. *Id.* at 766.

73. See Auerbach, Book Review, 87 HARV. L. REV. 1100, 1101 (1974).

74. *United States v. Nixon*, 418 U.S. 683 (1974).

75. Several biographies of Charles Evans Hughes have been written, see, e.g., B. GLAD, CHARLES EVANS HUGHES AND THE ILLUSIONS OF INNOCENCE (1966); S. HENDEL, CHARLES EVANS HUGHES AND THE SUPREME COURT (1951); D. PERKINS, CHARLES EVANS HUGHES AND AMERICAN DEMOCRATIC STATESMANSHIP (1956); M. PUSEY, CHARLES EVANS HUGHES (1951).

76. THE AUTOBIOGRAPHICAL NOTES OF CHARLES EVANS HUGHES (D. Danelski & J. Tulchin eds. 1973) [hereinafter cited as AUTOBIOGRAPHICAL NOTES].

77. A similar volume of recollections of Justice Frankfurter is provided in FELIX FRANKFURTER REMINISCES (H. Phillips ed. 1960).

measured by Hughes in terms of external acclaim, and little sense of personal satisfaction were persistent drives in his life.

A formal description of his public life is given by Hughes in these *Autobiographical Notes*; however, it is the account of his youth, education, and early career that provides the opportunity for fullest insight into Hughes the man. Throughout, the *Notes* Hughes adopts a matter-of-fact tone, as he describes it: "I shall not attempt an *apologia pro mea vita*. It is my purpose to set down objectively the facts concerning forebears and environment—the circumstances of my lot and the various efforts of professional and public life."<sup>78</sup>

Hughes' parents were both intellectually ambitious and diligent. They pressed their son to achieve the early academic success for which he showed a capacity. Hughes could read at three and one-half; by the time he was eight, he could read Greek. He left home for college at fourteen. Commenting on the difficulty of his early training and schooling, Hughes evidences a certain antipathy for its intensity and moralistic overtones.

During those early years . . . I was subject not only to an exceptional intellectual stimulus but also to a constant and rigorous religious discipline. It was much too constant and rigorous, for in the end it largely defeated its own purpose by creating in me a distaste for religious formalities. . . .<sup>79</sup>

College, for Hughes, was at first a liberating experience. At Madison College, now Colgate, Hughes developed a sense of independence and self-assurance. He even took up card playing which had been forbidden at home. In commenting about his departure from Madison to Brown after only two years, Hughes observed: "In leaving Madison I felt emancipated from rivalries for college honors and I had the notion that it would be delightful to follow my bent without any concern for marks."<sup>80</sup> Throughout his life Hughes manifested an affinity for competition, while continually feeling a desire to avoid it. This competitive spirit, apparently instilled by his parents' great demands and high expectations, had a disquieting influence upon his entire life. It naturally developed, that despite his desire to withdraw from academic competition at Brown, Hughes performed well in all his studies, stood third in his class, and received

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78. AUTOBIOGRAPHICAL NOTES, *supra* note 76, at 2.

79. *Id.* at 25.

80. *Id.* at 37.

an award which attested to his "ability, character, and attainment."<sup>81</sup> His career objectives during these college years were teaching and the ministry.

The class prophet in his college class had predicted his becoming a lawyer<sup>82</sup> but Hughes' entry into a life in law did not come until after some experience in teaching. During this time, Hughes began to read law and in order to accelerate his progress he enrolled in the Columbia Law School.

Before entering law school, Hughes applied for a position with Edgar Gray, a promoter of the Gill Rapid Transit Company.<sup>83</sup> His experience in this position provides an insight into the character of Hughes and the way in which he dealt with problems of business ethics and dubious legality. A condition for obtaining the position, according to Gray, was a small investment, the sum of which Hughes obtained from his father. Hughes and his father checked the soundness of the company with the founder of the enterprise, bankers, and a Wall Street firm. Soon after he began to work for the company, Hughes observed letters signed in Gray's hand using other persons' names; in fact, Gray began using Hughes' name to sign letters and telegrams. Although the situation was distressing to Hughes, he had a desire to retain the position, if at all possible.

I felt that it must be stopped at once. Still the affairs of the Rapid Transit Company seemed to be in good order and I did not wish to lose my job. In the midst of my anxiety, I had an inspiration. It occurred to me to go to the Astor Library and consult the newspaper files to find out if Mr. Gray and his enterprises had been mentioned. . . . I found in the *New York Tribune* an account of the electric light company, which had come to grief, and that Edgar Gray was no other than William E. Gray, a notorious character.<sup>84</sup>

With this information about Gray's unsavory and criminal background, Hughes confronted Gray and then approached Gill and informed him of his findings and asked for and received the return of the sum he had invested in the company. With the return of his money and two weeks severance pay, Hughes left the employ of the transit company. He does not indicate that he contacted officials

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81. *Id.* at 45.

82. *Id.* at 49.

83. *Id.* at 53-54.

84. *Id.* at 53.



with the information he discovered. Hughes' career was marked by such efforts to preserve his reputation inviolate, but evidenced by restraint in pursuing an attack on what others would consider unethical or illegal conduct.

At Columbia, Hughes was taught by the "Dwight Method" which used textbooks, rather than casebooks, as the basis for recitations. The other aspects of his law school experience involved the informal arrangements of small private review groups, a legal fraternity, and moot court. Complementing his law school work, Hughes obtained positions as a law clerk. While Hughes' record at law school was solid, he revealed the same aversion to competition which he evidenced at Madison: "The law school offered a prize for the best essay and the highest marks on a special examination, but I did not enter that competition, which was entirely voluntary, as I did not wish to attempt the extra effort after a hard year."<sup>85</sup>

Hughes' career in the New York bar provides a prototype of the contemporary experience of a young, well-connected male graduate of a prestigious law school who accepts a position as an associate in a Wall Street law firm and who through work and the proper personality is invited into partnership. Hughes well describes the sociology of "successful" practice.

The giants of the profession were retained in more important litigations and dominated the legal scene. Their firms were entrenched financially and socially, having as regular clients the large moneyed institutions and transportation companies. These highly privileged firms seemed to hold in an enduring grasp the best professional opportunities and to leave little room for young aspirants outside the favored groups . . . . If the young lawyer sees to it that his work is of the best and if by intelligence and industry he stands well in his own generation, he can afford to await his share of the privileges and responsibilities which to that generation are bound to come.<sup>86</sup>

Experiencing the gradual increase in responsibility Hughes moved from writing briefs, to representing clients in minor matters, to handling negotiations, and finally to conducting major litigation. Even during the years of his early practice, Hughes devoted energies to social and civic activities; he remained active in his college fraternity and he joined the Association of the Bar of New York and the

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85. *Id.* at 60.

86. *Id.* at 76.

Republican Club. By 1887, he was active in political campaigns and becoming a member of the professional and civic establishment of New York City.

Hughes viewed a career at the bar, at the outset, as providing special opportunities for material success. Moreover, lawyering seemed to him to require an adroitness of which he was confident; the law practice which he was undertaking was "a highly competitive field and called for agility as well as resourcefulness."<sup>87</sup> Yet, Hughes' aversion for competition and strenuous work continued to plague him and to undermine his satisfaction with his work. Constantly throughout his career he sought escape: ". . . I needed more than exercise to overcome the fits of depression which often followed exertions in difficult cases. A good deal of my professional work seemed to be unrequited drudgery and I needed periods of complete freedom, with joyous and uplifting experiences."<sup>88</sup>

Joining his classmate P. C. Cravath and Walter S. Carter, a prominent member of the New York bar, Hughes helped form the predecessor to one of the nation's major law firms.<sup>89</sup> Among its first clients was Westinghouse.<sup>90</sup>

After approximately three years of practice, Hughes, through the intervention of a former associate was offered a professorship in law at Cornell.<sup>91</sup> Although describing the motivation for accepting the position as one of intellectual curiosity, Hughes reveals a mixed motivation. It is difficult to accept his casual dismissal of material wealth, a major goal of his practice, but it is easy to see revealed again his desire to avoid competition and strenuous work.

[I] was offered a full professorship in the Law School, which I accepted. This action greatly distressed Mr. Carter. He thought it absurd. He pointed out my professional opportunities—even the prospect of what he termed "opulence." That did not attract me. While I naturally enjoyed receiving the fruits of my work, I had labored just as hard in cases involving small amounts, or where we were not paid at all, as in others. It was the nature of the questions involved, the interests of clients, and especially the opportunities for advocacy, which had appealed to me. *Now I was tired,*

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87. *Id.* at 77.

88. *Id.* at 114-15.

89. See generally R. SWAINE, *THE CRAVATH FIRM AND ITS PREDECESSORS*, 1819-1948 (1948).

90. *AUTOBIOGRAPHICAL NOTES*, *supra* note 76, at 84.

91. *Id.* at 88-89.

*and the offer of an academic retreat, affording what I thought would be abundant time for study and reading, was so attractive that I could not refuse it.*<sup>92</sup>

Hughes was greatly disappointed with his teaching career. First, he found a need for greater financial reward and second, and more importantly, he did not find a respite from competition and toil.

I saw that soon I should have to retrench to the point of serious inconvenience or should need a larger salary, which I knew it would be difficult to get as the University wished to maintain its salary scale without discriminations. Again, congenial as were my surroundings and work at Cornell, I was disappointed in the failure to have the opportunities for general reading and study to which I looked forward. Far from being on academic retreat, I found Cornell to be a hive of industry, and aside from the occasional and enjoyable evenings I spent with my colleagues, my life was one of constant toil; in truth, I was about as busy with my courses as I had been with my practice in New York.<sup>93</sup>

So Charles Evans Hughes returned to the practice of law.

His career in public service began when he was appointed counsel in the Gas and Insurance Investigations in New York in 1905-1906. He reluctantly accepted this position, doubting his own competence and questioning the efficacy of legislative investigations. More significantly, Hughes evidenced a dislike of public scrutiny while feeling a compulsion to accept public office.

That still left the question whether I was competent for such an undertaking, having no experience in legislative undertakings, I distrusted my capacity and I hated the idea of work where the public eye would be upon every step. . . . I felt, however, that it would be cowardly to refuse; that there was a public service of importance to be rendered and that if I went at it with the single purpose of doing a thorough professional job, that attitude would be recognized and in some way I should get through.<sup>94</sup>

While the insurance investigations were particularly important and inured to the benefit of Hughes' reputation, the experience was accompanied by the dread and strain which characterized most of Hughes' activity.

At times, I felt the responsibility almost too heavy to bear and the work too exacting to be continued. . . . [O]ccasionally at night I would feel worn out and utterly depressed and would exclaim to my wife, . . . "I simply can't go on." But after a night's rest, I would start again.<sup>95</sup>

Hughes' performance in the insurance investigation brought

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92. *Id.* at 89 (emphasis added).

93. *Id.* at 96.

94. *Id.* at 120.

95. *Id.* at 127.

him offers of the nomination for mayor of New York, which he refused, and then the Republican nomination for governor of New York, which he reluctantly accepted. As governor he was involved in continuing antagonism with party regulars. Although he felt a strong affinity for the principles adopted by the Republican party, he opposed what he regarded as abuses by entrenched party members in the Assembly and in party offices. The program of state government under Hughes was one of increasing activity along with rigorous requirements of administrative efficiency and accountability. Again, while his work as governor brought Hughes renown, so much so that he was considered as a candidate for President in 1908, he was reluctant to accept a second term. "Physically, I have been living on my reserves and I was nervously worn. Financially, I was making large inroads upon my savings. . . ." <sup>96</sup> Hughes did, however, accept the nomination and was re-elected. He enjoyed a successful term until he resigned in 1910 to accept a position as Associate Justice of the U.S. Supreme Court.

Hughes had to reconcile his acceptance of the position on the Court with his obligation to fulfill his term as governor. Some of the considerations he reflected upon were the limited time remaining in the term, his disinclination to remain in an executive office, and his sense of duty to serve the public as opposed to private practice with only limited public service. In a letter to President Taft he expressed his chief reason, which was his desire to be a Justice.

My training and professional interest have been such that I should undertake this work with a personal satisfaction which no other line of effort could command in the same degree. No one could have a more profound sense of vast responsibilities of the Supreme Court than I have . . . it also disposes me to welcome the opportunity to devote my life to such important service. Against such a life-work, to meet the conditions of which an adjustment could be made, I should not for a moment set any prospect of money-making at the bar. <sup>97</sup>

Hughes "found work [of the Court] very difficult," <sup>98</sup> and was disappointed by the acrimony he found to exist among the justices. <sup>99</sup>

Reluctantly, however, Hughes accepted the draft for the Republican presidential nomination in 1916 and resigned his post on the

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96. *Id.* at 148.

97. *Id.* at 160.

98. *Id.* at 164.

99. *Id.* at 168.

Court. It was his sense of duty to the party which led him to abandon a position which he found demanding, but thoroughly rewarding. When Hughes lost the election he returned to practice and joined a Wall Street firm. He accepted large fees, and was counsel in cases involving major business enterprises as well as national unions. Meanwhile, Hughes remained socially and politically active.

From 1921 to 1925, Hughes served as Secretary of State and played an important and satisfying role in the conduct of foreign affairs. In 1925, he again returned to practice which he described as "large, varied and lucrative."<sup>100</sup> During these years Hughes remained active in public service, accepting an appointment as Judge of the Permanent Court of International Justice in 1928. He continued to find his work stressful and excessively demanding but his ambition compelled him to remain. He states, for instance that: "At one time, however, in the Spring of 1927, I almost suffered a breakdown."<sup>101</sup>

Twice while Hughes was Secretary of State, he was approached by representatives of Presidents Harding and Coolidge to determine whether he was interested in accepting the position as Chief Justice. He refused both times. When Hoover became President, Hughes was again approached and, in contrast to his earlier statements and feelings, Hughes observed:

From the time of my resignation as Associate Justice in 1916, I had no desire to return to the Bench. I should certainly have refused an offer of an Associate Justiceship, and I did not for a moment contemplate being chosen as Chief Justice. I was greatly surprised when this was proposed near the end of January 1930.<sup>102</sup>

Hughes accepted the position of Chief Justice after first refusing on the basis of "my desire not to assume further and heavy responsibilities."<sup>103</sup>

Hughes' appointment was surrounded with controversy. It was stated in print that he was not Hoover's first choice but was offered the position as a matter of protocol and had unexpectedly accepted.<sup>104</sup> This was denied by both Hughes and Hoover.<sup>105</sup> More

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100. *Id.* at 285.

101. *Id.* at 287-88.

102. *Id.* at 291.

103. *Id.*

104. *Id.*

importantly, his nomination was opposed because of his representation and close association with corporate interests in his private practice.<sup>106</sup> Hughes was defended, however, by such eminent liberals as Zechariah Chaffee for having acted as an advocate in the tradition of the bar.<sup>107</sup>

Hughes found the normal work of the Court sufficiently demanding, but it was Roosevelt's "Court Packing" plan that presented the most difficult challenge to Hughes and to the integrity of the Court itself. Hughes, however, presided over the Court in a manner which weathered the storm. It was only his health and age which led him to resign in 1941.

Hughes ended his career with satisfaction in having met his sense of duty to public service. Measured in the eyes of his peers his career had been a success. While ambition drove him on, one is left with a sense of a life lived with tension and strain. For Hughes, his life was a series of roles to be played from which a certain sense of satisfaction was obtained. But he constantly strove to escape that life, finding refuge in trips and vacations. There was not that sense of ease and pleasure which one should hope to obtain from a life's work.

*William O. Douglas*

Unlike Marshall or Hughes, William O. Douglas struggled without wealth or family connections from a rural boyhood in Yakima, Washington, to a position as Associate Justice of the Supreme Court. Like Marshall and Hughes, Douglas' childhood and early education had a lasting impact on his character and views. Similar to Marshall, Douglas found life a series of challenges from which he gained great satisfaction and a sense of identity. Like Hughes, Douglas was plagued from early years by a feeling of inadequacy and a need to prove himself; but unlike Hughes, Douglas seems to have become master of his own drives and needs so that he is not beset by the nagging feelings of stress and exhaustion which so dominated Hughes' life. While Douglas chose a career in public service after early frustrations as an academic, his career was one accepted with an eager-

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105. See D. PEARSON & R. ALLEN, *THE NINE OLD MEN*, 74-75 (1937).

106. *AUTOBIOGRAPHICAL NOTES*, *supra* note 76, at 295.

107. *Id.* at 295-96. See also Z. CHAFFEE, *FREE SPEECH IN THE UNITED STATES*, 358-62 (1941).

ness which he has managed to sustain. More like Marshall, Douglas suggests he would not have lived his life in any other way.

*Go East Young Man*<sup>108</sup> is an autobiographical account<sup>109</sup> of Douglas' struggles from his birth until his appointment to the Supreme Court in 1939.<sup>110</sup> Two main themes can be observed in his autobiography: the growth of an individual against physical and social obstacles and the development of a social and political philosophy reflective of experience and sympathy.

At the age of three Douglas suffered an attack of poliomyelitis, which resulted in a general weakening of his health and damage to his legs. But more importantly, the care of his mother and the scorn of his classmates gave him a sense of inferiority which he fought successfully to overcome. It was, however, the poverty of his youth which had the most lasting effect on Douglas' personality and attitudes. His rejection of the wealthy establishment was made early.

I was hardly fourteen, but I knew the Rich who were the pillars of Yakima. I did not hate or despise them but I had no love or respect for them. They treated labor as scum; they controlled the police; some of them had investments in Yakima's brothels. They went to church and were "godly" men; but I had nothing in common with them.<sup>111</sup>

Douglas overcame his physical infirmities by hiking and mountain climbing. His experience has had the effect of making him a confirmed environmentalist.<sup>112</sup> More significantly, the experience of nature had profound effects on his character and his self-image.

I took my early hikes into the hills to try to strengthen my legs, but they were to strengthen me in subtler ways. . . . I do not envy those whose introductions to nature was lush meadows, lakes and swamps where life

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108. W. DOUGLAS, *GO EAST YOUNG MAN, THE EARLY YEARS, THE AUTOBIOGRAPHY OF WILLIAM O. DOUGLAS* (1974) [hereinafter cited as *GO EAST YOUNG MAN*].

109. For a well-stated critique of the limits of autobiography in general and of this autobiography in particular, see Latham, Book Review, 72 MICH. L. REV. 1656 (1974).

110. Other biographical sources are available, although no comprehensive or definitive biography has yet been written. See V. COUNTRYMAN, *DOUGLAS OF THE SUPREME COURT* (1959); Rodell, *As Justice Bill Douglas Completes His First Thirty Years on the Court*, 16 U.C.L.A. L. REV. 704 (1969); L. FRIEDMAN & F. ISRAEL, *THE JUSTICES OF THE UNITED STATES SUPREME COURT* (1969). For the equivalent of an intellectual biography of Justice Douglas, see, V. COUNTRYMAN, *THE JUDICIAL RECORD OF JUSTICE WILLIAM O. DOUGLAS* (1974).

111. *GO EAST YOUNG MAN*, *supra* note 108, at 7.

112. *Id.* at 203-47. See also W. DOUGLAS, *A WILDERNESS BILL OF RIGHTS* (1965).

abounds. The desert hills of Yakima had a poverty that sharpened perception . . . . It is the old relationship between scarcity and value, one of the lessons which the foothills of Yakima taught me.<sup>113</sup>

Similarly, Douglas' experiences as a solitary youth, and his work experiences in an ice factory and as an informant for the local vice squad gave him a profound sympathy for the working class and a lasting antipathy for the social elite.

While there were many children's parties in Yakima, we were never invited to a single one, and we were far too poor to have one in our own home. We grew up never seeing the inside of another home. In the after years I thought it was a blessing that I had not. For if I had been united with the elite of Yakima even by so tenuous a cord, I might have been greatly handicapped. To be accepted might then have become a goal in later life, an ambition that is often a leveling influence. To be accepted means living in the right area, wearing the right hat, thinking the right way, saying the right thing. What it means in the law is a Dean Acheson or John Foster Dulles or a reactionary president of the Bar Association. They cause all the beauty to disappear in a pontifical emptiness.<sup>114</sup>

While Douglas never sought acceptance into the social establishment, his driving ambition enabled him to gain entry into the establishment of merit. It was through education that his success came and his experience compelled in him a belief in an intellectual elite; this belief dominated his feelings about the ideal educational program.

Whatever system was used, the average student would end his academic career with junior college. The new tutorial institution would be geared for the exceptional student, usually aiming at some specialty requiring graduate work.

Excellence would be standard. . . . The tutorial institution would be aimed not at standardizing ideas, but at releasing the creative potential of every individual.

We might then in the end have a real aristocracy of talent drawn from the vast democratic pool of people of all races and all faiths and all standards of living.<sup>115</sup>

Douglas graduated first in his high school class. He matriculated at Columbia Law School where he did very well and was elected to the Law Review, an experience which he valued highly. "Never, up to then, did I have a brighter, happier moment in my life than

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113. GO EAST YOUNG MAN, *supra* note 108, at 36-38.

114. *Id.* at 60.

115. *Id.* at 115.



the day I received notice that I was an editor of the *Review*.”<sup>116</sup> But unlike Hughes, Douglas did not find law school demanding; “the intellectual competition at Columbia was not as keen as I had expected.”<sup>117</sup> Douglas graduated second in his class.

As a result of his performance at Columbia, Douglas was asked to join the faculty, which he did, teaching bankruptcy, damages, and partnership. Meanwhile, he also accepted a post of Cravath, de Gersdorff, Swaine and Wood, the Wall Street firm with which Charles Evans Hughes had been associated after he completed law school. Practice while teaching was a normal course at the time. Douglas, however, left New York for a period and took up practice in the state of Washington, not so much dissatisfied with New York as desirous of returning home. Nevertheless, he soon returned to the East and a full-time teaching position at Columbia, which he was convinced he would find more challenging and satisfying.

Douglas returned to full-time teaching for reasons which are quite similar to those given by Hughes, a chance to read and think. Unlike Hughes, Douglas found the experience he was seeking: “When I practiced law and taught, I was always rushing. I never had a chance to read, reflect, reread, study, converse at leisure. I always had to live on an intellectual subway, racing from point to point as I tried to absorb a book on the way.”<sup>118</sup> In his position as a full-time faculty member, Douglas observed: “My new leisure gave me time to reflect on my past and future and put current problems in perspective. For the first time I had the chance to browse in libraries. Now my intellectual perspective began to acquire new dimensions.”<sup>119</sup>

Douglas’ new intellectual experience had a disquieting effect; he became a “renegade” in the movement for curricular reform which was labeled “sociological jurisprudence.” His continuing concern with social welfare and justice rooted in his youthful experience was now joined with a dedication to interdisciplinary studies.

We wanted to join forces with other disciplines at Columbia—such as business, economics, sociology—to examine an entire area. We wanted inter-

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116. *Id.* at 145.

117. *Id.* at 148.

118. *Id.* at 159.

119. *Id.*

departmental fertilization of ideas. . . . Law had become a compartmentalized specialty, quite remote from the actualities of life. If we could integrate the various disciplines, we could learn what the law should be, by learning the problems with which it must deal.<sup>120</sup>

But Douglas and his collaborators' plans were soon thwarted.

I was to discover that reeducating teachers was the major stumbling block . . . . Most law professors did not want to throw away the notes they had been using for years. They were not concerned with, nor did they discuss with their students, the bias in existing laws and whether they truly served the public interest.<sup>121</sup>

Frustrated, Douglas left Columbia and accepted a position at Yale where he found an atmosphere more hospitable to his temperament and interests. His old antagonisms to the upper class remained and these affected his approach to the classroom, an approach of which he remains proud.

In retrospect, it was a rather hardbitten approach, fashioned on the Socratic method and based on the premise that in the forums of the law the soft-spoken, philosophical advocate had no high place. So I bore down hard, treating each student as if it were irrelevant that his father or grandfather was a "great man." I tended to treat the class as a lion tamer in the circus treats his wards. Soon the class was in protest, sending a committee to Dean Hutchins to have me fired. Hutchins called me in to his office and told me what the committee had said.

I replied that the students were grandsons of very eminent and at times disreputable characters, and that as a result of the wealth of their ancestors, the students had been spoiled all their lives. I said I thought it was time they learned that when they stood before a court or a jury, they would be judged by their perception and fidelity to the law, not by their ancestors.

"It's fine with me if you fire me," I said.

"Don't be silly. I'm merely passing the complaint on to you," Hutchins told me.

"I am inclined to bear down even harder on the spoiled brats."

"That would be revolutionary and wonderful."

And so I stayed on at Yale.<sup>122</sup>

At that time Douglas was also working on bankruptcy problems in Washington, D.C. with Julius Klein, Secretary of Commerce under Herbert Hoover.<sup>123</sup> After Roosevelt's election in 1933, Douglas left Yale to join the New Deal Administration in the Securities and

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120. *Id.* at 160.

121. *Id.*

122. *Id.* at 164-65.

123. *Id.* at 175.

Exchange Commission. There Douglas insisted on a fierce independence in his investigative activities. By the early thirties, Douglas seems to have fully accommodated himself to a place in the political establishment and to the exercise of power. His description of his activities during these years provides an important historical account of the formative period of one major government agency. By 1937, Roosevelt had appointed Douglas chairman of the Commission on the basis of Joseph Kennedy's recommendation and assessment of Douglas' work. Although Douglas enjoyed the power and prestige which came with being a member of the government, his social philosophy favoring individualism and opposing elitism continued, as his remarks assessing his role in the S.E.C. indicate:

In this century big business has been anti-free enterprise. Acquisition of wealth and power took priority over the development of the moral capacities of the individual. Big business behaved like bandits raiding a frontier. The gospel of wealth was equated with man's dignity before God; exploiting the community became a way of life. Material values were bedecked with moral or ethical values.<sup>124</sup>

Just as Douglas maintained a hostility to wealth while becoming a member of the establishment, he developed a criticism of the bureaucracy of government while serving in governmental positions.

The great creative work of a federal agency must be done in the first decade of its existence if it is to be done at all. After that it is likely to become a prisoner of bureaucracy and the inertia demanded by the Establishment of any respected agency . . . . [M]ost agencies become so closely identified with the interests they are supposed to regulate, eventually they are transformed into spokesmen for the interest groups.<sup>125</sup>

Douglas includes an account of his own efforts to keep the S.E.C. independent by resisting efforts to place it in a larger bureaucratic structure such as the Reconstruction Finance Corporation, and by refusing to make concessions to powerful private interests which used important political connections in efforts to pressure and influence S.E.C. decisions and activities.

Douglas reveals the importance in his life of the personalities and influence of other persons. He is conscious of the early influence of his mother, teachers, and friends. But as significant were the relationships he formed with Joseph Kennedy of the S.E.C., Justice

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124. *Id.* at 295-96.

125. *Id.* at 297.

Harlan Stone and most importantly President Franklin Roosevelt, whom he admired and who was primarily responsible for Douglas' career in public service and his appointment to the Supreme Court. People of strong personality and character have had as much influence on Douglas' life as his own struggle for health and position.

Douglas pleads a lack of ambition for a position on the Court: "I never even dreamed of being there. I did dream of being Chief Forester. I dreamed of being professor of English literature and, later dean of the Yale Law School. . . ." <sup>126</sup> Moreover, Douglas asserts that he had had no desire for public position prior to his experience on the S.E.C. "I never had a yen for public office. . . . Indeed, I grew up holding all such offices in disrespect, as I thought that most officeholders were either corrupt or represented some special, selfish interest." <sup>127</sup> Just as Hughes was criticized at the time of his appointment as being too closely aligned with corporate interests, amazingly enough, some newspapers criticized Douglas "for not being as liberal as he was supposed to be" and for being "lined up with Wall Street." <sup>128</sup> While nothing in Douglas' career qualifies him for the radical appellation that was applied to him in the late sixties, one can hardly deny that a liberal philosophy guides his life and thought. <sup>129</sup> This fact was recognized by the New Deal Congress which overwhelmingly confirmed his appointment. Douglas accepted his new position with a sense of resignation which belies the significance of a career which has received wide acclaim.

And so I came to the Court without personal ambition ever playing a part . . . . I was of course overwhelmed by the honor. But it was not in any

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126. *Id.* at 455. Charles Evans Hughes professed the identical lack of ambition for a position on the Supreme Court.

I have frequently been asked if I did not cherish such an ambition and I have answered, "Not for an instant." Of course, I was fully aware of the special combination of circumstances which would make such an appointment possible, and aside from that, my aspirations were more modest and I never gave it a thought. I dreamt of nothing more than a reasonable measure of professional success.

AUTOBIOGRAPHICAL NOTES, *supra* note 76, at 81.

127. GO EAST YOUNG MAN, *supra* note 108, at 456.

128. *Id.* at 464.

129. For an account of his career as Associate Justice of the Supreme Court, *see*, V. COUNTRYMAN, THE JUDICIAL RECORD OF JUSTICE WILLIAM O. DOUGLAS (1974). For a series of appreciations, *see* Earl Warren, Warren Burger, Michael Sovern & Sidney Davis, *In Honor of Mr. Justice William O. Douglas*, 74 COL. L. REV. 341 (1974).

degree a fulfillment, as it would have been to many of my friends who had a deep longing for that position. Not being a fulfillment it was, in a sense, an empty achievement. At first I did not like the work; it took me a few years to accommodate myself to the daily routine. Perhaps I was too young. Perhaps I had too much excess energy.<sup>130</sup>

Douglas came to enjoy his work in the Court; he never found it the onerous burden that Hughes did. But Douglas refused to let his position become the totality of his life and he ends his autobiography with a defense of his active role in public affairs which he claims as a right and duty. "A man or woman who becomes a Justice should try to stay alive; a lifetime diet of the law alone turns most judges into dull, dry husks."<sup>131</sup> This autobiography stands as a monument to Douglas' zest for life and as a model for a satisfying life lived in law.

## B. BIOGRAPHIES OF LEGAL ACADEMICIANS

On first thought, a biography of a legal academic would seem to provide a certain prescription for boredom. While the "secret lives" of persons so employed should be no less interesting than those of others, a career of pedantry seems doomed for obscurity. Biographies of legal scholars are not numerous, but those that have been written put to rest these initial impressions. An outstanding biography of an American legal academic which has not yet been surpassed is Samuel Williston's *Life and Law: An Autobiography*.<sup>132</sup> Nevertheless, there is a continual and increasing flow of biographies of American law teachers and scholars.

Too often the only accounts of the lives of noteworthy legal academics are biographical references of the *Who's Who* sort.<sup>133</sup> Other sources of biographical information are the commemorations sometimes published to note careers of living law scholars but more usually as memorials to well-known scholars.<sup>134</sup> When more extensive

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130. GO EAST YOUNG MAN, *supra* note 108, at 465.

131. *Id.* at 469.

132. S. WILLISTON, *LIFE AND LAW: AN AUTOBIOGRAPHY* (1940).

133. See, e.g., AMERICAN ASSOCIATION OF LAW SCHOOLS, *DIRECTORY OF LAW TEACHERS* (1974). This is an annual publication providing biographical information on all American law professors.

134. See, e.g., Sacks, *In Memoriam: Alexander Mordecai Bickel*, 88 HARV. L. REV. 689 (1975).

biographies of scholars are written, they are frequently intellectual biographies or critical commentaries on their scholarly productions. *The World and Ideas of Ernst Freund*<sup>135</sup> by Oscar Kraines is an example of such a work. While such endeavors provide very little insight into the personal life or satisfactions obtained from a career, they do make a systematic presentation of the individual's thought and the influences which generated it. They have their counterparts in the intellectual biographies of judges which give an account of their opinions and influence on legal development<sup>136</sup> and in books which describe important cases litigated by notable practitioners.<sup>137</sup>

### *Ernst Freund*

Ernst Freund's most significant work was in the areas of legislation and administrative law where as teacher and scholar he attempted to cope with the problems of drafting and discretion. His major publications deal with the police power of government,<sup>138</sup> administrative law,<sup>139</sup> and principles of legislation.<sup>140</sup> It was Freund's approach, during the first third of this century, to the complex problems of industrialization and urbanization that set him apart from other commentators.<sup>141</sup> Modern American society, according to Freund, would require legislative and executive or administrative solutions. The first approach led him to consider the police powers and standards for legislation; the latter caused him to consider the question of discretion and the methods of the administrative process.

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135. O. KRAINES, *THE WORLD AND IDEAS OF ERNST FREUND: THE SEARCH FOR GENERAL PRINCIPLES OF LEGISLATION AND ADMINISTRATIVE LAW* (1974) [hereinafter cited as *THE WORLD AND IDEAS OF ERNST FREUND*]. See also Allen, *Preface to ERNST FREUND, STANDARDS OF AMERICAN LEGISLATION* (1965), which provides a short biographical essay on Freund.

136. See, e.g., V. COUNTRYMAN, *THE JUDICIAL RECORD OF JUSTICE WILLIAM O. DOUGLAS* (1974); H. BILL, *THE VISION AND THE DREAM OF JUSTICE HUGO L. BLACK* (1975).

137. See, e.g., G. GETTY & J. PRESLEY, *PUBLIC DEFENDER* (1974); P. HOFFMAN, *TIGER IN THE COURT* (1973).

138. E. FREUND, *THE POLICE POWER: PUBLIC POLICY AND CONSTITUTIONAL RIGHTS* (1904).

139. E. FREUND, *CASES ON ADMINISTRATIVE LAW* (1911) (2nd ed. 1928); E. FREUND, *ADMINISTRATIVE POWERS OVER PERSONS AND PROPERTY: A COMPARATIVE STUDY* (1928).

140. E. FREUND, *STANDARDS OF AMERICAN LEGISLATION* (1917); E. FREUND, *LEGISLATIVE REGULATION: A STUDY OF THE WAYS AND MEANS OF WRITTEN LAW* (1932).

141. *THE WORLD AND IDEAS OF ERNST FREUND*, *supra* note 135, at 13-14.

Ernst Freund was born in 1864 in New York, but was educated and reared in Germany in a middle class Jewish environment.<sup>142</sup> He returned to New York in 1884. His first teaching post, like that of Douglas, was at Columbia University. After two years, he moved to the University of Chicago where he rose to prominence and exerted a strong influence in the development of the "home rule" form of municipal government in Chicago. While at first attracted by the interdisciplinary approach which so impressed Douglas, Freund came to believe that a professional school with a disciplinary emphasis was more appropriate. "Freund was instrumental in convincing [the president of the University of Chicago] that the more urgent need was for a professional school of high standards and that emphasis on research would naturally develop in such an institution."<sup>143</sup> Yet, Freund's interests and activities ranged broadly; he participated in the formation of the American Political Science Association and was influential in Illinois statutory and Chicago ordinance development. For many years Freund was active and influential in the National Conference of Commissioners of Uniform State Laws.

Freund's major emphasis was on the effect of government actions, whether legislative or administrative, on the rights of the individual. This was a shift from the dominant focus at the turn of the century which was on an efficient exercise of state power. This involved a shift from politics and public administration to a consideration of constitutional limitations and public law. By the time of his death, his influence was felt in the increased recognition of procedural requirements for legislative and administrative action which have come to full development in our own time.

As a teacher, and as early as 1915, Freund saw limited use for the case book method beyond the first year.<sup>144</sup> As a scholar, Freund emphasized the centrality of the social sciences to significant legal work and thought. As a man and a scholar, Ernst Freund stands as a model of a successful life lived in legal academia. Justice Frankfurter summed up the life of Ernst Freund when he lectured in 1954 at the University of Chicago.

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142. *Id.* at 2.

143. *Id.* at 2, citing Woodward, *Ernst Freund*, 19 UNIV. REC. 39 (1933).

144. THE WORLD AND IDEAS OF ERNST FREUND, *supra* note 135, at 150.

I don't think I ever met anybody in the academic world who more justly merited the characterization of a scholar and a gentleman. . . . Unlike many scholars of courtesy and kindness, he was a man of strong convictions. But in his case passion was behind his judgment and not in front of it . . . .

. . . .

Ernst Freund was a scholar and not a pedant. His specialized competence in the field in which he was a master and . . . a pioneer was set in the context of a wide and deep culture . . . . He was a pioneer in two domains which, until his coming, were non-existent in our legal scholarship, namely, administrative law and legislation . . . .<sup>145</sup>

### *Roscoe Pound*

A more conventional biography of a legal academic has been provided by David Wigdor in *Roscoe Pound: Philosopher of Law*.<sup>146</sup> This is the most comprehensive and by far the best biography of this giant of modern legal education.<sup>147</sup> It is, for the most part, an account of the experiences and influences which gave rise to Pound's legal thought. Pound rejected Langdell's theory of law as a system of rules for a "sociological jurisprudence [which] blended legal concepts with pragmatism and social science into a new synthesis"<sup>148</sup> and championed a theory of law which responded to social reality rather than existing as a system of abstract principles. This preference, according to Wigdor, was largely the result of his environment, physical and social.

Pound grew up in a vibrant frontier environment, reminiscent of John Marshall's early life.

The community and region in which Pound grew to maturity placed a premium on growth and development. This environment undoubtedly

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145. *Id.* at 153, citing F. FRANKFURTER, THE ERNST FREUND LECTURE: SOME OBSERVATIONS ON SUPREME COURT LITIGATION AND LEGAL EDUCATION 1 (1954).

146. D. WIGDOR, ROSCOE POUND: PHILOSOPHER OF LAW (1974) [hereinafter cited as ROSCOE POUND].

147. This biography places major emphasis on the work of Pound as a philosopher of law but it does provide insight into the career of Pound as a teacher and administrator. See Griswold, Book Review, 88 HARV. L. REV. 1340, 1343 (1975).

Pound had a towering intellect, and his contributions deserve continuing reassessment. Dr. Wigdor has presented a comprehensive and perceptive review of his work in the philosophy of law. There is ample room for further work on Pound, and on his contributions to law and to legal education. We may hope that they will be of the same quality as this book.

For an earlier biography, see P. SAYRE, THE LIFE OF ROSCOE POUND (1948).

148. ROSCOE POUND, *supra* note 146, at ix.



helped prepare him for a positive conception of social and institutional change and gave him confidence in man's ability to control his destiny. Furthermore, the frontier legacy and the fascination of the plains created an environment with an emphasis on diversity.<sup>149</sup>

His parents provided a stimulus for and expectation of successful intellectual development: "Both parents were highly educated and placed great value on learning."<sup>150</sup> Moreover, his father was a lawyer.

Pound began his studies in botany in his native Nebraska and his entrance into the Harvard Law School in 1889 was a concession to his father's wishes. Unlike Douglas, Pound arrived at law school with ample funds. He took quickly to the cultural and political life of Boston which he continued to enjoy when he later returned to Harvard as a faculty member and dean. Although only remaining at Harvard as a student for a year, Pound left his law school experience with a sense of enthusiasm for law and legal study.

At least he knew that he had become vitally interested in the mysteries of the law . . . . All of his teachers led him to a judge-centered view of the legal process, a position not uncongenial for the son of a judge. In short, Harvard encouraged him to challenge the legal system within the context of that system. Pound had acquired a foundation for his pursuit of law and its relationship to society.<sup>151</sup>

Pound's return to Nebraska immediately involved him in the practice of law, but he continued for a decade to involve himself quite extensively in botany. It was not until his appointment to the Nebraska Supreme Court Commission to assist in clearing the court's docket that he largely abandoned science. Yet, his scientific studies had a profound effect on his view of the law as a developmental system with a need to accommodate the circumstances and requirements of the social environment. Pound's later writings in sociological jurisprudence mirrored his earlier botanical scholarship which argued that plant formation occurred in a "biological community in which each factor has more or less interaction with every other factor, a relation determined not merely, not necessarily, by the fact

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149. *Id.* at 5.

150. *Id.* at 6.

151. *Id.* at 47.

of association, but also a result of biological forces induced by physiological and meteorological phenomena."<sup>152</sup>

Pound's career as a practitioner, like that of Marshall's, was made easier by the prominence of his distinguished pioneer family. Yet, he also possessed ability and ambition which brought him recognition in his own right. He chose a general practice which later served him well in his comprehensive approach to legal theory. Nevertheless, it is Wigdor's premise that Pound's accommodation to convention, which assured his success and prominence, was the most significant limitation on the originality and development of his thought.

Pound was aware of this conventional aspect of his life and thought. A few years after his return to Lincoln, he observed, in an unusual moment of self-awareness, his tendency to accept existing institutions and conventional standards. "Why am I in the Law?" he asked. "Why because my father wished it. Why do I make a pretense of being civilized when I am at heart one of the most uncivilized creatures at large? Because I have a certain family standard to maintain. Fashion, convention and a wholesome fear of the laws; there you have the explanation of everything in my life."<sup>153</sup>

This conventional attitude, the author asserts, explains in part why Pound chose a more established profession over a life in science, which was not yet recognized as an important career. Moreover, it is reflected in his choice of law itself which is steeped in tradition and characterized by a conservative element. Wigdor, however, attempts to show that Pound's life and thought were marked by a tension between an instrumentalist and relativistic view which obtained support from his botanical and evolutionary studies and an organic conception of self-regulating mechanisms toward which his view of convention and tradition impelled him. His family and education encouraged a questioning attitude yet forced him toward a conventional career. His experience at the bar was concerned with reform while involving him in a search for fundamental, yet flexible, principles which could guide the more conservative judiciary which he favored over the legislature.

When Pound was named dean of the Nebraska Law School,

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152. *Id.* at 57, citing R. POUND & F. CLEMENTS, *PHYTOGEOGRAPHY OF NEBRASKA* 161 (2d ed. 1900).

153. *Id.* at 71-72.

formal legal education was still in its infancy. Pound spearheaded the movement away from a part-time practitioner faculty to a full-time faculty of scholars. His Harvard Law School experience offered a model which he attempted to emulate. Much like Douglas two decades later, Pound urged the development of law as an academic discipline infused with the insights of other areas of study.

[H]e was convinced that the law school must do more than "teach law and make lawyers." In order to produce graduates who were more than technicians, legal study had to be informed by disciplines such as history and philosophy. "Doubtless, many will smile," Pound mused, "when I speak . . . of philosophy." Yet, attitudes about law merely reflected more fundamental assumptions that were often unexpressed and unrecognized. Laws were not created in a vacuum, and they must not be studied in a vacuum.<sup>154</sup>

Legal education, for Pound, was to have a practical result in its influence on the practicing bar.

The new prestige of legal education would make the teaching of law a respected professional role, and faculties would develop more depth, expertise, and impact. A pragmatic jurisprudence would eventually replace existing mechanical conceptions, for the new corps of professors would give students an appreciation for the social dimension of law.<sup>155</sup>

Pound's reform of the Nebraska Law School required support which he did not always feel was forthcoming. As a result, he resigned his deanship at Nebraska in his second term. At the urging of students, faculty and administrators, and with promises of added support from the regents of the university, he reconsidered and agreed to return as dean. This new support brought higher salaries, new faculty positions, and the addition of a law library. Thus, while Pound was active as a scholar publishing books and articles, he managed to be an effective dean and law school administrator.

From Nebraska, Pound went to Northwestern University as a faculty member. In part, Pound felt that he had done all the building possible for a time at Nebraska and Northwestern offered a position of some national prominence. Wigdor describes its attraction: "The Northwestern University School of Law was one of the finest law schools in the country. Its excellent library, commitment to scholarship, and light teaching schedules enabled the faculty to pursue ambitious research projects."<sup>156</sup> The lure was of the type to at-

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154. *Id.* at 106-07.

155. *Id.* at 107.

156. *Id.* at 133.

tract a scholar. While in Chicago, Pound began his systematic study of criminal law which provided a basis for some of his most significant writings<sup>157</sup> and was an impetus for further development of his interdisciplinary approach and his concept of "social engineering." He urged:

a comprehension of the point of view of all; that instead of the alienist and the psychologist and the sociologist and the jurist and the economist going their several paths and throwing each his individual light upon our system of punitive justice, the light of all these be concentrated into one ray which shall throw upon our system of punitive justice the combined wisdom of all those who are entitled to bring scientific knowledge to bear upon it.<sup>158</sup>

During this period, Pound served as a journal editor and helped to found a number of publications which would provide a forum for his ideas.<sup>159</sup>

Although Northwestern had been hospitable, search for prestige and the association with a number of notable scholars including Ernst Freund, caused Pound to accept a position on the University of Chicago faculty, even though the salary was less. At Chicago, Pound turned his attention to procedural reform, the area which was of equal concern to Freund at the time. Simplification of procedure was the main characteristic of the program Pound urged. A corollary to this program was a rejection of what Pound called the "jurisprudence of conceptions" and the urging of a pragmatic sociological jurisprudence. Rather than a deductive system, Pound espoused an approach which would test legal conclusions by their effect and consequence. Pound's opposition to conventional jurisprudential schools—analytical, historical, and natural law—put him at odds with much of the mainstream of contemporary legal thought. But his legal scholarship was recognized and he was invited to join the Harvard Law faculty in 1910. Pound was convinced that his influence would be greatest from a position at Harvard and it was there that he became identified as the leading proponent of sociological jurisprudence in America.

Pound's ideas, of course, were not generated in a vacuum. He

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157. See, e.g., R. POUND, *CRIMINAL JUSTICE IN AMERICA* (1945) and R. POUND, *CRIMINAL JUSTICE IN THE AMERICAN CITY—A SUMMARY* (1922).

158. ROSCOE POUND, *supra* note 146, at 143-44.

159. See, e.g., the *ILLINOIS LAW REVIEW* of which Pound was the editor from 1907-1909 and on which he exerted a very strong influence.

was in fact influenced greatly by the philosophical movement known as pragmatism and by a pervasiveness of critical relativism which had eroded classical theory in both history and economics. At Harvard, Pound began to synthesize his ideas and work them into a systematic approach to law. "Pound had already developed a view of law that rejected formalism and finality, and within months after his return to Harvard in 1910 he began to mold the gropings of a decade into a comprehensive legal philosophy."<sup>160</sup> This statement of a comprehensive philosophy of law was congruent with the ideas Pound had identified as central to pragmatism. He expressed this relationship to contemporary philosophical trends most unmistakably.

The sociological movement in "jurisprudence," he announced, "is a movement for pragmatism as a philosophy of law; for the adjustment of principles and doctrines to the human conditions they are to govern rather than to assumed first principles; for putting the human factor in the central place and relegating logic to its true position as an instrument."<sup>161</sup>

All legal ideas, in the end, were for Pound to be judged as instruments: "[t]hink of legal principles as instruments rather than as external pigeonholes into which all human relations must be made to fit."<sup>162</sup> This instrumental view of law came to dominate the American legal conscience and is only now under attack as failing to account for the place of fundamental principles of law based on human values central to democratic society.<sup>163</sup>

Yet, as Wigdor points out, Pound himself did not subscribe unambiguously to an instrumental view of law. There was, in Wigdor's terms, an unresolved dualism in the tension between instrumentalism and organicism in Pound's thought.<sup>164</sup> While urging that law should be based on social realities, Pound continued to maintain a strong allegiance to the common law tradition. A trilogy of commitments: organicism, traditionalism and professionalism led Pound to conclude that "the law will *absorb* the new economics and the new social

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160. ROSCOE POUND, *supra* note 146, at 186.

161. *Id.* at 187.

162. *Id.* at 188, citing Pound, *Making Law and Finding Law*, 82 CENT. L.J. 358 (1916).

163. See Hermann, *The Fallacy of Legal Procedure as Predominant Over Substantive Justice: A Critique of "The Rule of Law" in John Rawls' "A Theory of Justice,"* 23 DEPAUL L. REV. 1408 (1974).

164. ROSCOE POUND, *supra* note 146, at 207-32.

science,"<sup>165</sup> that the tradition of the judiciary would continue, and that the law would achieve a central position in modern society. Pound's view was a reflection of the continuing tension between formalism and instrumentalism which characterizes modern legal thought. In Wigdor's words, "Organicism competed with instrumentalism in a relentless intellectual tug-of-war."<sup>166</sup>

Pound found Harvard a congenial home for his teaching and scholarship. He was well-received and respected by his colleagues, although his work was not without criticism. Nicholas Murray Butler, President of Columbia, who would later block curricular reform at the Columbia Law School and drive young William O. Douglas off to Yale, dismissed sociological jurisprudence and the work of Pound as faddish.<sup>167</sup>

With the support of his colleagues at Harvard, Pound was named dean in 1916, a position which he held for two decades. His period of truly creative thought came to an end after this appointment and he turned to elaborations of principles which he had already once stated. He devoted a great amount of effort to the further strengthening of legal education in general and the Harvard Law School in particular. Time had to be given to successfully fending off alumni charges of subversion following World War I when criticisms were launched against a number of faculty, including Pound, but centering on Zechariah Chaffee. Pound continued to have periodic misgivings about retaining his position, but was convinced by the entreaties of colleagues and alumni to stay on until 1936. Pound, of course, continued active involvement in professional activities, particularly criminal law reform.<sup>168</sup>

Pound presided over a great growth in the Harvard Law School: student enrollment doubled, the faculty quadrupled and the endowment increased sixfold with major additions made to the physical plant. Yet, Pound's governance of the law school brought some criticism of autocratic administration. W. Barton Leach is cited for such criticism: "Pound ran the Law School as if he had just bought 51 per cent of the stock. He neither sought nor tolerated opposi-

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165. *Id.* at 209.

166. *Id.* at 230.

167. *Id.* at 202.

168. *Id.* at ch. 10.

tion."<sup>169</sup> By the end of his tenure, Pound had become stodgy in his approach to legal education as well as to social and political controversy. For example, he did not take a position on the Sacco-Vanzetti case<sup>170</sup> and was timid in resisting anti-Semitism. In education, Pound blocked further curricular reform and refused to bring social scientists onto the faculty as was being done at Columbia and Yale. Perhaps as an administrator he simply did not continue to grow; or perhaps he just became too old. In any case, at the time of his retirement from the deanship in 1936, he had become somewhat disillusioned with legal education.

The denouement of Pound's deanship was not a happy one. During his final year he confided . . . that there was "little left of the old spirit which has come down from Langdell and Ames." The bitter conflicts over academic policies and personalities as well as corrosive political differences must have made it easier for him to resign. . . .<sup>171</sup>

With his departure from the deanship and return to teaching, Pound found a need to defend his dedication to the judiciary in light of the development of administrative agencies and New Deal policies in general. Moreover, the skepticism of legal realism presented a profound threat to his conception of the integrity of legal theory which bound instrumentalism to organicism. Pound also resisted those who would convert law study into policy science study. Thus, through the thirties, Pound became even more rigid in his own thought and position although he continued to be quite active in public affairs and in scholarship. In 1959, he published his multi-volumed *Jurisprudence* which summarized his life's work. His last years at Harvard brought him honorary degrees and the respect of colleagues and students. Pound died in 1964 at the age of ninety-three, having lived a productive and satisfying life. Wigdor summarized the life of Pound in terms similar to Leonard Baker's epitaph for John Marshall: "His varied experience as an attorney, judge, teacher, scholar, administrator, and government adviser possessed a unifying leitmotif, a tireless devotion to the case for law."<sup>172</sup>

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169. *Id.* at 249.

170. In contrast Felix Frankfurter, then a member of the Harvard law faculty, gave a stirring defense of the defendants, Sacco and Vanzetti. See F. FRANKFURTER, *THE CASE OF SACCO AND VANZETTI* (1927).

171. ROSCOE POUND, *supra* note 146, at 254.

172. *Id.* at 281.

## C. BIOGRAPHIES OF ATTORNEYS

*John W. Davis*

A practicing lawyer serves as counselor and advocate; a successful lawyer must not only accommodate to these roles but also achieve a sense of fulfillment in exercising these skills. The life of John W. Davis was a life of advocacy, practiced with enthusiasm, whether in the service of private litigants or in the service of the public. University of Virginia historian William H. Harbaugh has provided, in the best tradition of the scientific biography, a very fine account of Davis' life, *Lawyer's Lawyer: The Life of John W. Davis*.<sup>173</sup>

Davis first practiced as an attorney in West Virginia and then in New York where he developed a reputation on Wall Street as one of the finest corporate lawyers in America and one of the most active appellate advocates in the nation's history. He served briefly as a state legislator and as Congressman, but his reputation as a public lawyer was obtained chiefly as Solicitor General from 1913-1918. His advocacy skills also served him as Ambassador to the Court of St. James from 1918 to 1920 and in his unsuccessful campaign for the presidency in 1924 as the Democratic nominee. While Davis enjoyed a career in public affairs, most of his life was lived as an advocate; it was as an advocate that he made his reputation and wealth, and it was as an advocate that John W. Davis thought of himself.

Davis' life as an appellate advocate is fascinating, having presented more than 140 cases before the Supreme Court. As Solicitor General, he argued successfully the constitutionality of the child labor laws,<sup>174</sup> the antitrust laws,<sup>175</sup> and the draft law.<sup>176</sup> As a private appellate advocate his career was crowned by his successful representation in 1952 of the steel companies who resisted President Tru-

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173. W. HARBAUGH, *LAWYER'S LAWYER: THE LIFE OF JOHN W. DAVIS* (1973) [hereinafter cited as *THE LIFE OF JOHN W. DAVIS*]. For critical commentary on this book by historians, see Gould, Book Review, 83 YALE L.J. 866 (1974); Auerbach, Book Review, 87 HARV. L. REV. 1100 (1974). For a critique by legal academics, see Marks, Book Review, 63 GEO. L.J. 849 (1975); Ely, Book Review, 72 MICH. L. REV. 1495 (1974).

174. *Hammer v. Dagenhart*, 247 U.S. 251 (1918).

175. *United States v. United States Steel Corp.*, 251 U.S. 417 (1920).

176. See, e.g., *Goldman v. United States*, 245 U.S. 474 (1918).



man's seizure of mills during a steel strike.<sup>177</sup> While one can read with fascination the account of Davis' successful representation of the government and his clients in these cases, the real significance of the book lies in the account of the personal dimensions of this "Lawyer's Lawyer," his motivations, his resolution of apparent ethical conflicts and the deep and abiding influence on his work of his birth, social standing, and his historical environment.

Davis was born and raised in West Virginia. His father was involved in state politics and was a successful practitioner with a driving compulsion to win. The family was pro-slavery, an attitude which affected John W. Davis' segregationist beliefs in later life. As a child Davis was well-mannered and this command of the social graces came to be a characteristic much admired by others in his adult life.

Washington and Lee College and Law School provided Davis with the academic background that sustained his career. While at the time the University lacked rigor, it provided an adequate education and Davis achieved academic and social acceptance, if not prominence. Davis reflected on his gentlemanly approach to education when he observed: "Of what I carried away . . . the personality of the old faculty is of greater value . . . than any book learning they were able to drill into me."<sup>178</sup> Davis' law school training was steeped in states' rights and strict construction of the constitution,<sup>179</sup> taught within the framework of the case method and lecture. The focus was almost entirely on a technical mastery of the law without the development of critical evaluation of public policy. The result of this training was to make Davis a competent lawyer who relied almost entirely on the indoctrination of his youth and his private beliefs as his sole sources of standards for criticism of legal principles or developments. Harbaugh describes this legacy in Davis' career:

[I]n his policy pronouncements as a leader of the bar he always emphasized that the lawyer's proper role was that of the highly skilled technician. Unlike the architect, engineer, or artist, he asserted, "the lawyer as a lawyer does not build or erect or paint anything. He does not create.

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177. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

178. *THE LIFE OF JOHN W. DAVIS*, *supra* note 173, at 16-17.

179. *Id.* at 20.

All he does is lubricate the wheels of society by implementing the rules of conduct by which the organized life of men must be carried on."<sup>180</sup>

After a brief period of practice with his father in West Virginia, Davis accepted a one year teaching position on the law school faculty at Washington and Lee.<sup>181</sup> While the burden of class preparation weighed heavily on Davis, he obtained a measure of satisfaction from a confidence that he was preparing students for practice at the bar. Nevertheless, after a year of teaching, Harlaugh observes that: "He finally concluded that he preferred the 'rough and tumble' of private practice to the 'daily grind' of teaching."<sup>182</sup>

In his first major case, after his return to West Virginia, Davis represented a union contesting contempt charges based on an anti-strike injunction. The case was his father's, but young Davis was asked to take charge. He succeeded in obtaining rather light sentences for the workers, which was viewed as a victory even by the unions.<sup>183</sup> But Davis never again represented a union in any important case. Davis developed a reputation in West Virginia as a legal craftsman and increasingly attracted new corporate clients. One colleague in West Virginia summed up the qualities that made Davis a successful practitioner in his home state:

He was intellectual without the flaw of austerity . . . much less disparagement of the opinions of the lesser endowed; he was dignified without loss of friendly interest; he was scholarly without the fault of pretention; he enjoyed success but demanded immunity from praise. He was never abstruse, never deceptive, and never employed argument to cloud or confuse an issue. He was always direct and explicit. Integrity was a naturally dominant element of his character.<sup>184</sup>

Partly out of feeling that he was carrying more than his share of his father's business and partly out of simple fascination with politics, Davis sought escape from practice by election to the state House of Delegates. He disliked campaigning, a dislike which would later plague him in his unsuccessful bid for the presidency. As a state representative, Davis evidenced a magnetic personality and within days of his initial term was highly regarded.

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180. *Id.* at 23.

181. *Id.* at 27-28.

182. *Id.* at 30.

183. *Id.* at 41.

184. *Id.* at 59.

With his success as a state legislator, pressure developed for Davis to run for Congress. His reluctance to run reflected two currents that ran deep through his professional life: seeking financial security, which was greater in private legal practice, and a general lack of deep commitment to public office or any particular political position or view.<sup>185</sup> Nevertheless, Davis was nominated and elected. In Congress, as in the state legislature, Davis quickly gained a reputation as a vigorous and active representative: "Never, said the Speaker of the House Champ Clark in the summer of 1913, did he recall a young Congressman earning so great a reputation in so short of time as had John W. Davis of West Virginia."<sup>186</sup> Davis' reputation was in great part attributable to the application of his developed skills in advocacy to his work as a legislator. This was especially the case with his support of the anti-injunction bill which he drafted and fought for in the House; it later became part of the Clayton Anti-trust Act.<sup>187</sup>

Yet, Davis found Congress lacking the stimulation of practice: "The heaviest of Davis' congressional burdens was boredom. . . . 'Endless *cunctation*—active obstruction, sometimes, more often mere passive inertia—until I wish myself at something else.'"<sup>188</sup> Two matters which came before the House were particularly suited for the use of Davis' skill in advocacy. The first, the impeachment of Robert W. Archibald, a circuit judge assigned to the United States Commerce Court, involved the charge that the judge had entered into advantageous business contracts with litigants before his court.<sup>189</sup> Davis was active in the impeachment proceeding and was a manager of the case in the Senate. Davis, in a second case, served on a House committee to determine what action could be taken against a person who had assaulted a member of Congress in retaliation for remarks made in official debate. The committee recommended that Charles Glover be held in contempt for striking Representative Thetus W. Sims.<sup>190</sup>

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185. *Id.* at 64.

186. *Id.* at 69.

187. *Id.* at 72.

188. *Id.* at 73.

189. *Id.* at 85.

190. *Id.* at 85-86.

The skill which Davis exercised in these two cases caused him to be seriously considered for the position of Solicitor General. Davis, however, was interested, for the only time in his life, in a judicial appointment as a member of the Fourth Circuit Court of Appeals. Davis campaigned for the position, but Wilson, who had previously committed himself, refused him. Davis accepted the position as Solicitor General as a consolation.

In this position, Davis was called upon to defend the myriad of social legislation that had been enacted during the administrations of Roosevelt, Wilson and Taft. While Davis held serious doubts about the wisdom of the statutes, he applied all his technical skills in successfully defending them. As Solicitor General, admiration from the bench and bar came to Davis along with a reputation as one of the finest appellate lawyers in the country. Those who came to know him characterized him as possessing grace and charm, though he was a hard driver of colleagues and of himself. Harbaugh presents a summation of opinion on Davis' performance as Solicitor General.

He had earned the respect and affection of all his associates. And he had drawn warm tributes from every man who served on the Court between 1913 and 1918. Chief Justice White, who ranked him second only to Taft as a lawyer, once remarked half seriously, "Of course, no one has due process of law when Mr. Davis is on the other side." Hughes called him the "clearest thinker and the best informed and prepared man" to argue before him during his six years as Associate Justice. And Holmes regarded him as the most complete advocate he had ever heard. "Of all persons who appeared before the Court in my time," he said near the end of his life, "there was never anybody more elegant, more clear, more concise or more logical than John W. Davis."<sup>191</sup>

Following his service as Solicitor General, Davis was appointed Ambassador to the Court of St. James. He was initially reluctant to accept the position, feeling no inclination toward foreign service and expressing concern over the financial sacrifice the post would require. "He did not care to be wealthy, but no amount of 'tinsel honor' could compensate for a penniless old age."<sup>192</sup> Nevertheless, the insistence of his wife and the urging of the Secretary of State caused him to accept. The post-World War I relations between England and the United States were strained, and Davis' skills in ad-

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191. *Id.* at 127-28.

192. *Id.* at 129-30.

vocacy along with "his charm and sensitivity" permitted effective representation of American interests while reducing tensions. Probably more than anything, Davis' experience in England heightened his appetite for material wealth and led to his return to America where he pursued income with tenacity.

In the great country houses, surrounded by lush, green lawns and beautifully maintained gardens, Davis saw a way of life which struck him as the most agreeable in the world. He loved the casual grace, the instinct for form, the well-stocked minds, the feeling for language. And he was enchanted by the great houses' historical treasures. . . .<sup>193</sup>

Davis returned to the United States in 1921 to become a partner in the Wall Street law firm of Stetson, Jennings & Russell which listed among its corporate clients J.P. Morgan and Co. By the terms of his contract, Davis was to have "leadership of the firm, a \$50,000-a-year guarantee, and 15 per cent of the net (\$469,000 in the first seven months of 1920). With any new business at all, this meant that Davis could expect upwards of \$150,000 a year."<sup>194</sup> Davis was faced with the possibility that his connection with the firm and the representation of its clients would preclude any further elected office. As one political friend observed: "the very nature of [the firm's] business and clientele, must have forced a final choice as to a political career."<sup>195</sup> Yet, the promise of wealth drew Davis to the firm without reservation. When offered a position on the Supreme Court in 1922, Davis refused it largely as a result of his desire to accumulate material wealth. He stated in his letter rejecting the appointment that "[h]e had entered practice in New York with the fixed intention of remaining in private life until he had accumulated 'not a fortune, for that is beyond the reach both of my desire and my opportunities in these income tax days—but some economic independence.'"<sup>196</sup> Davis' rejection of the position led Justice Taft to observe in correspondence with a member of the New York bar: "If you people in New York were not so eager for money and would be content to live on a reasonable salary . . . you might have some representatives on our bench, but you are all after the almighty dollar."<sup>197</sup>

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193. *Id.* at 145.

194. *Id.* at 183.

195. *Id.* at 185.

196. *Id.* at 192.

197. *Id.* at 193.

While money was a major attraction for Davis in his return to practice, he evidenced and professed a thorough liking for the work which he accepted in the firm.

Not only did the former Ambassador hold old clients and attract new ones, he proved to be a hard-driving industrious advocate who ground out as much or more work as anyone else . . . . Yet he loved the forced study, and his correspondence during these first months was almost euphoric: "You have no idea what pleasure and enthusiasm I return to [the law]. . . . I was never happier, either in my work or in my surroundings . . . . The only thing which makes me distrust the permanence of my professional vigor is that the loss of a case no longer depresses me as hopelessly as in days gone by."<sup>198</sup>

Still Davis did not abandon public life; he observed, "I am trying to give 100% of my time to the earning of a livelihood and still retain 25% for outside activities."<sup>199</sup> Among his activities was the Democratic party, and in 1924, on the 103rd ballot, Davis was nominated for president by his party. His party was divided, and Coolidge was an incumbent. Davis was defeated by 2-to-1 in the popular vote. The more significant objections to his election were his representation of large corporate clients to the exclusion of all others, and an identification of Davis as an advocate of his client's activities and abuses, much the same criticism suffered by Hughes and Douglas upon their nomination to the Supreme Court. Davis offered, in his defense, one of the most eloquent statements in explanation of the lawyer as advocate.

At no time have I confined my services to a single client, and in consequence I have been called upon to serve a great many different kinds of men; some of them good, some of them indifferently good, and others over whose character we will drop the veil of charity. Indeed, some of my clients—thanks perhaps to their failure to secure a better lawyer—have become the involuntary guests for fixed terms of the nation and the state. Since the law, however, is a profession and not a trade, I conceive it to be the duty of the lawyer, just as it is the duty of the priest or the surgeon, to serve those who call on him unless, indeed, there is some insuperable obstacle in the way.

No one in all this list of clients has ever controlled or even fancied that he could control my personal or my political conscience. I am vain enough to imagine that no one ever will. The only limitation upon a right-thinking lawyer's independence is the duty which he owes to his clients, once selected, to serve them without the slightest thought of the effect such a service may have upon his personal popularity or his political fortunes.

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198. *Id.* at 187-88.

199. *Id.* at 188.

Any lawyer who surrenders this independence or shades this duty by trimming his professional course to fit the gusts of popular opinion in my judgment not only dishonors himself but disparages and degrades the great profession to which he should be proud to belong.<sup>200</sup>

Some have argued that it was not Davis' representation of corporate clients, but his exclusive representation of them that provided a basis for criticism.<sup>201</sup> It should be noted, however, that Davis also represented persons in cases involving civil liberties: he represented an individual who had been denied citizenship because of conscientious objection;<sup>202</sup> he served as an adviser and as a character witness for Alger Hiss in both trials;<sup>203</sup> he assisted in the representation of J. Robert Oppenheimer in the hearings before the Atomic Energy Commission which involved suspension of Oppenheimer's security clearance.<sup>204</sup>

More importantly, Davis' career raises the question of what role personal philosophy should play in the representation of other persons' interests; should it determine what cases are taken or what arguments are made? As one commentator has noted, Davis "evaded accountability by seeking refuge in professional duty, which was sufficiently resilient to accommodate any demand upon it."<sup>205</sup>

Davis lost the election and with that defeat he never again sought nor held significant public office. Moreover, a stiffening conservatism and a residual racism led him to resist New Deal reforms, to oppose a growing federal government and to fight integration. Yet, Davis was contented with his practice and enjoyed his private life.

Despite his brooding concern for the fate of the nation, Davis remained a contented man in his private life. The grace and charm, the empathy and sensitivity, the exquisite sense of occasion—all the qualities that had prompted George V to call him "the most perfect gentlemen" he had ever

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200. *Id.* at 198-99.

201. See Auerbach, Book Review, 87 HARV. L. REV. 1100, 1105 (1974), where this criticism is noted:

But the question was not whether loyal representation was provided. It was whether the recipients of loyal representation constituted a restricted, identifiable clientele whose interest shaped a lawyer's practice, values, and politics, and thus his qualification for public office.

202. THE LIFE OF JOHN W. DAVIS, *supra* note 173, at 281-97. See *United States v. Macintosh*, 283 U.S. 605 (1931).

203. THE LIFE OF JOHN W. DAVIS, *supra* note 173, at 445-53.

204. *Id.* at 454-61.

205. Auerbach, *supra* note 201, at 1105,

met—became even more refined as his self-confidence deepened and his early aspirations [sic] for security, comfort, and professional eminence were fulfilled.<sup>206</sup>

Particularly satisfying for Davis was his profession as a lawyer.

To the end of his life, advocacy was John W. Davis' pleasure, passion and genius. Three times or more in the 1920's and 1930's he rejected overtures to become a college president. "I am first and last a lawyer . . . . When I have strayed . . . into other paths, I have always come back with a sense of relief. . . . The cobbler should stick to his last."<sup>207</sup>

### George C. Edwards

The career of John W. Davis was one characterized in part by practice in a large Wall Street firm representing major corporate clients. In contrast, the career of George Clifton Edwards, Sr., was spent as a sole practitioner, specializing in the representation of workers and blacks in Dallas, Texas, during the first half of this century. Edwards' story is told in *Pioneer-at-Law*<sup>208</sup> by his son, a judge on the Sixth Circuit Court of Appeals.<sup>209</sup> In a forward to the book, Earl Warren noted the significance of the work of Edwards and suggested that without the efforts of his son to memorialize his work,<sup>210</sup> it might never be noted by succeeding generations.

This is the life story of a man without ambition or fortune or fame in a structured society but who, with compassion and dignity, dedicated a long professional career with profound lasting effects to the cause of the poor, the underprivileged, and the oppressed. He, of course, was never accorded either fame or fortune, and without flinching he willingly accepted his share of the obliquity inflicted upon his clients and the causes he pursued.<sup>211</sup>

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206. THE LIFE OF JOHN W. DAVIS, *supra* note 173, at 385.

207. *Id.* at 399.

208. G. EDWARDS, *PIONEER-AT-LAW: A LEGACY IN THE PURSUIT OF JUSTICE* (1974) [hereinafter cited as *PIONEER-AT-LAW*].

209. The author, George Edwards, Jr., has himself had an interesting career which has brought him a position on the U.S. Court of Appeals in Cincinnati. His confirmation was opposed by those who criticized him for his activist practice and membership in such organizations as the League for Industrial Democracy. See J. GOULDEN, *THE BENCHWARMERS: THE PRIVATE WORLD OF THE POWERFUL FEDERAL JUDGE* (1974).

210. See McCree, *Books for Lawyers*, 61 A.B.A.J. 20, 24 (1975), where the review approvingly notes the commemorative quality of the book.

It is an effective and timely antidote to the deserved criticism heaped on the legal profession because of recent reprehensible behavior of some of its members in high places in the national government. It shines like a candle in the dark, and I hope it will stimulate inspirational reminiscences about other unsung heroes of the bar.

211. *PIONEER-AT-LAW*, *supra* note 208, at 9.



The book is an example of a rather formal legal biography—the memorial. Its value lies more in the account it gives than in its style and form.

George Edwards, Sr., represented the poor, the black, the accused and the worker, although he did not reject the business client who sought his services.<sup>212</sup> His son describes his practice, which began, in 1910, in terms that would sound familiar to a contemporary legal services attorney.

Dad's practice of law was trial practice. He was a poor man's advocate—by choice. . . . [M]ost of his cases were against parties who were accustomed to winning without opposition. They rarely settled anything. . . . It was not entirely a labor of love for him. He tried cases brilliantly (or so I thought), and he won many of them. But the effort was exhausting, and when he won he took no great joy in the victory. His man should have won—indeed, was an injustice that he should have been put to trial.

He had a good deal of criminal practice on behalf of a remarkably unsuccessful and penurious clientele. He represented tenants whom landlords were seeking to oust; home buyers whose homes banks were seeking to foreclose; time-payment purchasers whose stoves or refrigerators, furniture houses were seeking to repossess; workmen who were being sued by (or were suing) loan sharks . . . and persons injured in accidents that they believed, were a result of somebody else's negligence.<sup>213</sup>

Edwards was born in Dallas, Texas. He studied at the University of the South (Sewanee) where he prepared for the ministry, a profession he practiced upon his return to Texas. His ministry was among the poor, the families of workers employed in cotton mills,<sup>214</sup> and it was here that a deep commitment to the problems of the poor was formed. Edwards then spent some time teaching in Dallas schools, but he sought a more active profession and became a legal apprentice. "It was a fairly simple process in 1908 to become a lawyer. A prospective lawyer could be admitted to practice in Texas by passing the bar examination after studying law under supervision of a lawyer."<sup>215</sup>

His first case after being admitted to the bar involved an elderly black man accused of criminal assault upon a three-year-old white

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212. *Id.* at 90.

213. *Id.* at 85-86.

214. *Id.* at 20.

215. *Id.* at 27.

child.<sup>216</sup> Before he could get to trial, however, the defendant was lynched. This experience intensified Edwards' commitment to the disadvantaged and convinced him of the need to protect minority rights against unprincipled majoritarian action.

Edwards' sole avocation was reading.<sup>217</sup> He greatly enjoyed literature and in particular the classics. He also took an active role in politics: in 1906 he ran for governor of Texas on the Socialist ticket;<sup>218</sup> in 1924 he campaigned for Robert LaFollette.<sup>219</sup> He later became a New Deal liberal.

Edwards' practice is typified by the case of Jean Riveria who, unemployed, was threatened with eviction for failure to pay on a bank note. After determining that the merits of the case favored the bank, Edwards advised his client to have his wife and seven children sit on the front bench of the courtroom on the day of the hearing. "[T]he judge dismissed the case. He said the bank could refile its suit when its equities were stronger. . . ."<sup>220</sup> As the author suggests: "Sometimes Dad's legal practice took on aspects of social work."<sup>221</sup>

Edwards courageously opposed the Ku Klux Klan during his career. Once he was physically abducted by the Klan along with two clients whom he was defending in his capacity as an ACLU attorney.<sup>222</sup> The clients were beaten, although Edwards was released. He continued undaunted, however, in his defense of civil liberties.

By the end of his career, Edwards had established himself as a successful labor lawyer and an effective advocate for the black people of his community. Edwards was proud of his socialist philosophy which had guided him in his work. Although he was not contented with the progress that had been made toward social justice, he died feeling that his work had in some way made it more likely that affluence, the recognition of individual rights and equality for all would someday be achieved. Edwards' life lived in law was guided

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216. *Id.* at 29.

217. *Id.* at 49.

218. *Id.* at 18.

219. *Id.* at 49.

220. *Id.* at 90.

221. *Id.* at 87.

222. *Id.* at 107-21.

primarily by his social and political philosophy; a philosophy gave meaning to his life and comforted him as he reviewed his life's work. He wrote:

The one distinctive feature of my life has been my belief in and work for Socialism. . . . Socialism has been my inspiration, my philosophy, and my guide for action . . . .

Holding such convictions, as I look back over the years since '99, I find little of which to be personally proud and much about which to be humble and chagrined. If hell is paved with good intentions, I have furnished quite a block there . . . .

The current civil rights program and discussion are proof that democracy is struggling in America to end the disgrace of racial intolerance . . . [witness] the growing appreciation of regional planning like the T.V.A., the recognition of social responsibility for the aged and the unemployed, the certainty that we shall settle the housing problem . . . the advance of the Negro towards political rights . . . .<sup>223</sup>

Additionally, his private life brought him happiness and solace. "A family appreciative beyond my deserts, interesting work, good health, good eyes, good books, Texas sunlight, and hope for a finally just and democratic society—who could reasonably ask for more?"<sup>224</sup>

### *Elmer Gertz*

Elmer Gertz is a lawyer who combines the skill and reputation as an advocate enjoyed by John W. Davis<sup>225</sup> and George C. Edwards' practice of representing criminal defendants, unpopular clients, and persons claiming abridgement of civil liberties. In his chatty autobiography, *To Life*,<sup>226</sup> Elmer Gertz gives an account of his fight against censorship and the death penalty, his post-conviction representation of Nathan Leopold, as well as an account of his youth and some of the significant acquaintanceships which have influenced his life.

Gertz, the son of immigrants, evidences filial devotion to his parents and particularly to his grandfather who has always been a legend to him. In this autobiography, Gertz reminisces about his parents, his school days, and private life. He had a number of jobs

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223. *Id.* at 242-44.

224. *Id.* at 244.

225. See opinion of Chief Justice Berger in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 355 (1974) where Gertz is characterized as "an advocate in the highest tradition of the law."

226. E. GERTZ, *TO LIFE* (1974) [hereinafter cited as *TO LIFE*].

before becoming a lawyer, including teacher, ghost writer and script writer. His college experience, aside from the relationships he established, was satisfying only for the literature and public speaking classes. Much like the avocation of Edwards, reading was and remains a particularly satisfying experience for Gertz: "To me books were always as important as people. My life was highlighted by my experiences with the printed word."<sup>227</sup> This may explain in part Gertz' efforts in a series of books to give an account of his own life experience so that others might share it through the printed word just as he had shared others' lives.<sup>228</sup>

Gertz traces his own interest in becoming a lawyer to his being picked up by the police as a youth, held incommunicado, and questioned about the murder of Bobby Franks, the victim in the *Loeb-Leopold* case. "I am sure, too, that, at least in part, I became a lawyer, . . . because I wanted to make certain that fundamental rights would be preserved for the people, and that I would have a share in that great task."<sup>229</sup> Reports of the Sacco-Vanzetti murder also caught young Gertz' imagination, and he identified with the defendants.

The University of Chicago Law School provided Gertz a sound legal education, and there he was exposed to a number of "the giants," including Ernst Freund. Freund, Frankfurter and Cardozo were his early models. After law school, he joined a relatively small Chicago firm, Epstein and Avery, with which he remained associated for fourteen years.

From the beginning of his practice Gertz earned a comfortable livelihood, but throughout his legal career he wanted more than wealth; he wanted exciting and interesting cases.

Most of [American lawyers] had respectable practices and, unlike the Depression year, 1930, when I was admitted to the bar, they were beginning to earn reasonably good livelihoods from relatives, friends, neighbors, and if lucky, strangers. All these lawyers wanted to win their cases. I wanted to have cases worth winning, cases with substance and meaning beyond fees

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227. *Id.* at 29.

228. See, e.g., E. GERTZ, *A HANDFUL OF CLIENTS* (1965) and E. GERTZ, *MOMENT OF MADNESS: THE PEOPLE VS. JACK RUBY* (1968). Gertz has also written books on literary persons such as Frank Harris and Carl Sandburg and on such contemporary problems as American ghettos.

229. To LIFE, *supra* note 226, at 34.

earned. And I wanted to be a complete citizen, and a writer. I wanted to be erudite without being dull.<sup>230</sup>

In his professional life, Gertz has been active in professional and civil organizations including the National Lawyers Guild, the Decalogue Society of Lawyers, the American Jewish Congress, the Chicago Council against Racial and Religious Discrimination, the Chicago Commission on Human Relations, and the Public Housing Association.<sup>231</sup> He has played a role in the admission of black lawyers to the Chicago Bar Association.<sup>232</sup> Throughout his career, Gertz has been put off by what he calls "the conservatism" of the legal profession, and has tried to move professional associations toward liberal positions and policies.

Gertz provides a survey of the exciting cases with which he has been involved. More than the details of the cases, a sense of satisfaction, is conveyed in this testimonial to a gratifying life lived in law. His satisfaction has been heightened by the pleasures he obtains from his lectureship at the John Marshall Law School. But it is in practice that Gertz lives his life in law "using the law as an instrumentality for something beyond personal satisfaction. I can argue cases before reviewing tribunals and feel that I am among my peers, reasoning with them, and teaching the truth, now and then, to judges."<sup>233</sup> Much like John Marshall, Gertz shows no longing for the past, indicates no desire to relive his life, reveals a satisfaction with his career: "I know that today is the best that we have. I cherish it. At the same time, there are definite plans that I have, as well as timeless dreams."<sup>234</sup>

### CONCLUSION

The legal biographies reviewed in this Article provide an opportunity to observe the breadth and depth of motivations and satisfactions of a life in law. Certainly family background and social standing can make the road to success less strenuous, as in the cases of John Marshall and John W. Davis, but not always. The sense of

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230. *Id.* at 73.

231. *Id.* at 93.

232. *Id.* at 81-82.

233. *Id.* at 249.

234. *Id.* at 251.

strain continually felt by Charles Evans Hughes presents one example of a professional life filled with constant tension. Even a background of poverty and obscurity does not preclude prominence, as exemplified by William O. Douglas, nor prevent a satisfactory career, as with George Edwards. A political commitment, as felt by Marshall, a quest for respect and admiration, as demonstrated by Hughes, a commitment to a social philosophy, as practiced by Edwards, can provide alternative central motivations for a life's work. For individuals such as Roscoe Pound and Ernst Freund, the law provides a career of intellectual challenge and an opportunity for a satisfaction in contributing to the development of a social force. Some, such as John W. Davis, seek chiefly financial gain and fame; others seek excitement and stimulation in their work, as does Elmer Gertz. Some lawyers choose or are chosen to represent the interests of the powerful, wealthy or the state; other lawyers choose to represent the poor, the common person, the interests of the community. All, however, seem to prize the degree to which they can look back on a life in law without regret.

Legal biography is literature and one can find many well-written works that provide an aesthetic experience. Biography and autobiography are also historical writings, and when they use primary sources or personal recollections they can provide insights into the past and explanations for the present. For the law-trained person, the biographies and autobiographies of those involved in the law can provide models, vicarious experiences, and lessons as well as examples of errors of judgment. The lives of judges, legal academics and practicing lawyers provide examples of patterns of lives lived in varying activities, using the legal training in common to all. Moreover, accounts and testimonials of those who have lived satisfying lives in law can provide a sense of meaning for those who, caught mid-career, find their life filled with professional demands, but no promise of lasting significance. Most important, however, is the opportunity to come to know others who have worked in law, their problems, conflicts and satisfactions. By coming to know others we may come to better know ourselves.